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ABSTRACT

This document contains statements by educators, religious groups, government officials, constitutional experts, and concerned citizens and groups on various legislative proposals to provide aid to elementary and secondary education. The proposals would (1) provide payments to the States for elementary and secondary education, (2) redress inequitable distribution of resources for elementary and secondary education among States and among local educational agencies within the States, and (3) allow a specified tax credit for tuition paid for nonpublic elementary and secondary education of dependents. The contributors present both favorable and opposing views to these proposals. (JF)

TAX CREDITS FOR NONPUBLIC EDUCATION

HEARINGS

BEFORE THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

NINETY-SECOND CONGRESS

SECOND SESSION

ON

H.R. 16141 and Other Pending Proposals

RELATING TO AID TO PRIMARY AND SECONDARY EDUCATION
IN THE FORM OF TAX CREDITS AND/OR DEDUCTIONS

AUGUST 14, 15, 16, 17, 18; SEPTEMBER 5, 6, AND 7, 1972

Part 1 of 3 Parts

(August 14, 15, and 16, 1972)

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TAX CREDITS FOR NONPUBLIC EDUCATION

MONDAY, AUGUST 14, 1972

House of Representatives,
Committee on Ways and Means,
Washington, D.C.

The committee met at 10 a.m., pursuant to notice, in the committee room, Longworth House Office Building, Hon. Wilbur D. Mills (chairman) presiding.

The Chairman. The committee will please be in order. Today we begin public hearings on pending proposals relating to aid to primary and secondary education in the form of tax credits and/or deductions. Without objection, I shall insert in the record a copy of the committee's press release issued on August 2 announcing the hearing, as well as the text of a committee print relating to proposals on this subject.

(The press release referred to follows:)

[Press release of Wednesday, Aug. 2, 1972]

Chairman Wilbur D. Mills (D., Ark.), Committee on Ways and Means, Announces Public Hearings on Proposals Pending Before the Committee on Ways and Means Relating to Primary and Secondary Education to Begin on Monday, August 14, 1972

Chairman Wilbur D. Mills (D., Ark), Committee on Ways and Means, U.S. House of Representatives, today announced that the Committee will begin public hearings on Monday, August 14, on H.R. 16141 and other pending proposals in the Committee on Ways and Means relating to aid to primary and secondary education in the form of tax credits and/or deductions. H.R. 16141 which the Honorable Hugh L. Carey, a member of the Committee on Ways and Means, introduced for himself and Chairman Mills today, in brief would: (1) provide payments to the States for elementary and secondary education; (2) redress inequitable distribution of resources for elementary and secondary education among States and among local educational agencies within the States; and (3) allow a specified tax credit for tuition paid for elementary and secondary education of dependents. A short summary of this bill is attached.

There are also pending before the Committee on Ways and Means a number of other proposals providing tax credits for elementary and secondary education, such as H.R. 13495, a bill introduced earlier by Congressman Burke of Massachusetts, for himself and Chairman Mills; H.R. 13020, introduced by the Honorable John W. Byrnes, the ranking Minority Member of the Committee on Ways and Means, for himself and the Honorable Gerald R. Ford; and a number of other similar proposals. A committee print containing the language of these proposals, along with a summary of H.R. 16141 introduced by Congressman Carey and the Chairman today, will be available upon request at the Committee staff office, Room 1102 Longworth House Office Building, Washington, D.C. 20515.

It will also be recalled that on June 21, 1971, the Honorable Caspar W. Weinberger, Director of the Office of Management and Budget, in a letter to Chairman

Mills commenting on H.R. 13495, suggested that the Committee on Ways and Means conduct hearings on this subject.

The lead-off witnesses will be representatives from the Administration to be heard on Monday and Tuesday, August 14 and 15. It is anticipated that the Honorable George P. Shultz, Secretary of the Treasury, the Honorable Elliot L. Richardson, Secretary of Health, Education and Welfare, and the Honorable Caspar W. Weinberger, Director, Office of Management and Budget, will testify for the Administration. Witnesses from the general public will be scheduled for appearances before the Committee from Wednesday, August 16, through Friday, August 18, when the Congress will recess for the Republican Convention. The hearing will resume and the balance of public witnesses will be heard sometime after Labor Day.

Requests to be heard *must* be received by the Committee by *not later than* the close of business, *Thursday, August 10*, addressed to John M. Martin, Jr., Chief Counsel, Committee on Ways and Means, Room 1102 Longworth House Office Building, Washington, D.C. 20515 (telephone: area code 202, 225-3625). Notification will be made as promptly as possible after this cut-off date as to when witnesses have been scheduled to appear. Once the witness has been advised of his date of appearance, it is not possible for this date to be changed. If a witness finds that he cannot appear on that day, he may wish to either substitute another spokesman in his stead or file a written statement for the record of the hearing in lieu of a personal appearance.

In view of the limited time available to the Committee to conduct this hearing, it is requested that all persons and organizations with the same general interest designate one spokesman to represent them so as to conserve the time of the Committee and the other witnesses, prevent repetition and assure that all aspects of the proposals can be given appropriate attention. Because of the Committee's heavy legislative schedule, which will limit the time available to the Committee in which to conduct this hearing, it will probably be necessary to allocate time to witnesses for the presentation of their direct oral testimony. If the witness wishes to present a long and detailed statement to the Committee, it will be necessary for him to confine his oral presentation to a summary of his views while submitting a detailed written statement for the Committee members' consideration and for inclusion in the record of the hearing.

The request to be heard must contain the following information, otherwise delay may result in the proper processing of a request.

(1) the name, address, and capacity in which the witness will appear;

(2) the list of persons or organizations the witness represents and in the case of associations and organizations their total membership and where possible a membership list;

(3) the amount of time the witness desires in which to present his direct oral testimony (not including answers to questions of Committee members);

(4) an indication of whether or not the witness is supporting or opposing any specific proposal or proposals on which he desires to testify; and

(5) a topical outline or summary of the comments and recommendations which the witness proposes to make.

With respect to oral testimony, the rules of the Committee require that written statements be submitted to the Committee office no later than 48 hours prior to the scheduled appearance of the witness. Seventy-five (75) copies of the written statements would be required in this instance; an additional 75 copies may be submitted for distribution to the press and the interested public on the witness' date of appearance.

Any interested organization or person may submit a written statement in lieu of a personal appearance for consideration for inclusion in the printed record of the hearing. Such statements should be submitted before the close of the hearing in triplicate. An additional 75 copies of written statements for the printed record will be accepted for distribution to the press and the interested public if submitted before the final day of the public hearing.

It would be most helpful for all prepared statements to contain a summary of testimony and recommendations and that throughout the statement itself pertinent subject headings be used.

If a prospective witness has already submitted a request to be heard on any of the subjects covered by this hearing, the request should be re-submitted furnishing the above information and otherwise conforming to the rules of the Committee as set forth for conducting this hearing.

SHORT SUMMARY OF H.R. 16141, THE "PUBLIC AND PRIVATE EDUCATION ASSISTANCE ACT OF 1972"

PURPOSES

(1) To provide payments to the States for elementary and secondary education;

(2) To redress inequitable distribution of resources for elementary and secondary education among States and among local educational agencies within the States;

(3) To allow a specified tax credit for tuition paid for elementary and secondary education of dependents.

SHORT SUMMARY. TITLE I: PAYMENT TO STATES

A. Public Education Equalization and Expenditures

A Public Education Trust Fund would be established out of which a Federal matching payment of 50 percent of State education expenditures would be made.

B. Allocation of Funds Among States

By computations detailed in the bill, the average State-wide education expense per student and the average State-wide property tax rate necessary to pay the total expense are determined.

These figures are then applied on a district-by-district basis to determine the allocation of State equalization funds. A final figure is determined which represents the gap between the district's presumed ability to raise education revenue and its need for such revenue.

In those States with a unitary method of financing (where the financing comes from the State government and not from local revenue-raising bodies), a program will qualify if it is supplying at least 90 percent of the non-Federal funding of public education within each school district in the State.

TITLE II. TAX CREDIT FOR TUITION

A tax credit, not to exceed $200 or 100 percent of the tuition paid on behalf of a dependent, will be made available for private school tuition.

COST

According to the estimates of the Joint Committee on Internal Revenue Taxation, Title I would cost $2.25 billion in Federal payments to the States and would average $50 per public school student. The tax credit in Title II would result in a maximum revenue loss of $584 million. The total cost of the legislation would therefore not exceed $2.834 billion.

SAFEGUARDS

The legislation provides for nondiscrimination and judicial review procedures.

Effective Date December 31, 1971.

[Text of committee print entitled "Aid to Primary and Secondary Education in the Form of Tax Credits and/or Deductions"]

NOTE: There are numerous bills pending in the Committee on Ways and Means providing tax credits and/or deductions for elementary or secondary education expenses in addition to those contained in this print, including at least those listed below (all House bills):

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12819
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15108
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15325
15328
15335
15355
15420
15556
15672
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TEXT OF H.R. 16141

A BILL Introduced by Mr. Carey, for himself and Mr. Mills of Arkansas, on August 2, 1972, to provide payments to States for public elementary and secondary education and to allow a credit against the individual income tax for tuition paid for the elementary or secondary education of dependents.

SECTION 1. SHORT TITLE

This Act may be cited as the "Public and Private Education Assistance Act of 1972".

TITLE I—PAYMENTS TO STATES FOR PUBLIC ELEMENTARY AND SECONDARY EDUCATION

SEC. 101. PAYMENTS TO STATES

Except as otherwise provided in this title, the Secretary (as defined in section 107(a)) shall, for each entitlement period (as defined in section 107(b)), pay out of the Public Education Trust Fund created by section 104 to each State for use by such State for public education equalization expenditures (as defined in section 102), a total amount equal to the entitlement of such State for such period (determined under section 103). Such payments shall be made in installments during any period but not less often than once each quarter. Such payments for any period may be initially made on the basis of estimates. Proper adjustment shall be made in the amount of any payment to a State, to the extent that the payments previously made to such State under this title were in excess of or less than the amounts required to be paid. A State may not treat funds it receives under this title as a contribution made from non-Federal funds for purposes of any formula provided by a law of the United States under which non-Federal funds must be made available in order to receive Federal funds.

SEC. 102. PUBLIC EDUCATION EQUALIZATION EXPENDITURES

(a) In General.—For purposes of this title, the term "public education equalization expenditures" means payments by a State under a program for the purpose of equalizing educational opportunities of public school students in the State.

(b) Qualified Programs.—

(1) Where State supplies at least 90 percent of cost of public education.—If a State for any entitlement period supplies 90 percent or more of the non-Federal funding of public elementary and secondary education, then its expenditures for such period will be considered to be public education equalization expenditures if the State funds are allocated among public elementary and secondary schools under—

(A) a program based on providing an equal amount of funds for the education of each public school student in the State, or

(B) a program based on providing deferential amounts of funds for public school students in the State if the Secretary determines that the program is designed to achieve the equalization of educational opportunities of public school students within the State.

(2) Where State supplies less than 90 percent of cost of public education.—If a State for any entitlement period supplies less than 90 percent of the non-Federal funding of public elementary and secondary education, then its expenditures for such period will be considered to be public education equalization expenditures if the State funds are distributed among school districts under a program which will allocate State funds among school districts for an entitlement period in proportion to the amount by which each district's hypothetical educational expenditures exceeds the sum of its hypothetical property tax revenue plus State allocations to the district for public education other than allocations under a program providing public education equalization expenditures.

(A) For purposes of this subsection, the term "hypothetical educational expenditures" means for any school district the product derived by multiplying (i) the number of public school students within the district times (ii) the total non-Federal expenditures for public education within the State over the total number of public school students within the State.

(B) For purposes of this subsection, the term "hypothetical property tax revenues" means for any school district the product derived by multiplying (i) the assessed value of all assessable real property within the district times (ii) the total non-Federal expenditures for public education within the State over the total assessed value of all assessable real property within the State.

(C) Regulations.—The Secretary may prescribe regulations describing other programs for equalizing educational opportunities of public school students expenditures under which will qualify as public education equalization expenditures.

SEC. 103. AMOUNT OF ENTITLEMENT OF STATE

(a) In General.—Except as provided in subsection (b), there shall be paid to a State from the Trust Fund created by section 104 for any entitlement period an amount equal to the sum disbursed by such State out of State funds for such period as public education equalization expenditures. For purposes of this section, the sum disbursed out of State funds shall not include amounts provided to the State out of Federal funds.

(b) Exceptions.—

(1) If for any entitlement period, the total payments provided under subsection (a) exceed the amount appropriated for the Trust Fund for such period, the amount of payments to each State under subsection (a) shall be reduced proportionately.

(2) The total payment to a State for any entitlement period under subsection (a) may not exceed 10 percent of the total non-Federal funds spent within the State for such period on public elementary and secondary education.

SEC. 104. PUBLIC EDUCATION TRUST FUND

(a) Appropriations.—

(1) In general.—There is hereby appropriated out of any amounts in the general fund of the Treasury attributable to the collections of the Federal individual income tax not otherwise appropriated $2,250,000,000 for the fiscal year beginning July 1, 1972, and $2,250,000,000 for each fiscal year thereafter.

(2) Deposit in trust fund.—The amount appropriated by paragraph (1) for any period shall be deposited in the trust fund created by subsection (b) on the first day of such period (or, if later, on the day on which this Act is enacted).

(b) Creation of Trust Fund.—

(1) There is created in the books of the Treasury of the United States a trust fund to be known as the "Public Education Trust Fund" (referred to in this subtitle as the "Trust Fund"). The Trust Fund shall remain available without fiscal year limitation and shall consist of such amounts as may be appropriated to it and deposited in it as provided in subsection (a). Amounts in the Trust Fund may be used only for the payments to States provided by this title.

(2) The Secretary of Health, Education, and Welfare shall be the trustee of the Trust Fund and shall report to the Congress not later than March 1 of each year on the operation and status of the Trust Fund during the preceding fiscal year.

SEC. 105. GENERAL PROVISIONS

(a) Assurance of State Public Education Equalization Expenditures Plans.—In order to qualify for any payment under this title for any entitlement period beginning on or after July 1, 1972, a State must establish (in accordance with regulations prescribed by the Secretary) to the satisfaction of the Secretary—

(1) that the State will establish a trust fund in which it will deposit all payments it receives under this title;

(2) that it will use amounts in such trust fund (including any interest earned thereon while in such trust fund) only for high-priority public education equalization expenditures, and that it will so use such amounts during such reasonable period or periods as may be provided in such regulations;

(3) that the State will pay over to the Secretary (for deposit in the general fund of the Treasury) an amount equal to 110 percent of any amount expended out of its trust fund established pursuant to paragraph (1) in violation of paragraph (2) which is not promptly repaid to the trust fund (or the violation otherwise corrected) after notice and an opportunity to take corrective action;

(4) that the State will—

(A) use such fiscal, accounting, and audit procedures as will conform to guidelines established therefor by the Secretary (after consultation with the Comptroller General of the United States) and as will assure compliance with paragraphs (2) and (3),

(B) provide to the Secretary (and to the Comptroller General of the United States), on reasonable notice, access to, and the right to examine, such books, documents, papers, or records as the Secretary may reasonably require for purposes of reviewing compliance with this subsection (or, in the case of the Comptroller General, as the Comptroller General may reasonably require for purposes of reviewing compliance and operations under subsection (c)(2)), and

(C) make such annual and interim reports to the Secretary as he may reasonably require;

(5) that all laborers and mechanics employed by contractors or subcontractors in the performance of work on construction finance in whole or in part out of its trust fund established under paragraph (1) will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5), and that with respect to the labor standards specified in this paragraph the Secretary of Labor shall act in accordance with Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c); and

(6) that persons employed in jobs financed in whole or in part out of its trust fund established under paragraph (1) will be paid wages which shall not be lower than the prevailing rates of pay for persons employed in similar jobs by such State.

(b) WITHHOLDING OF PAYMENTS.—If the Secretary determines that a State has failed to comply substantially with any provision of this title (other than section 106) or any regulations prescribed thereunder, after giving reasonable notice and opportunity for a hearing to the Governor of such State, the Secretary shall notify the State that if such State fails to take corrective action within 60 days from the date of receipt of such notification further payments to such State shall be withheld for the remainder of the entitlement period and for any subsequent entitlement period until such time as the Secretary is satisfied that appropriate corrective action has been taken and that there will no longer be any failure to comply. Until he is satisfied, the Secretary shall make no further payments of such amounts.

(c) ACCOUNTING, AUDITING, AND EVALUATION.—

(1) IN GENERAL.—The Secretary shall provide for such accounting and auditing procedures, evaluations, and reviews as may be necessary to insure that the expenditures of funds by the States comply fully with the requirements of this title.

(2) COMPTROLLER GENERAL SHALL REVIEW COMPLIANCE.—The Comptroller General of the United States shall make such reviews of the work as done by the Secretary, and the States, as may be necessary for the Congress to evaluate compliance and operations under this subtitle.

SEC. 106. NONDISCRIMINATION PROVISION

(a) No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

(b) Whenever the Secretary determines that a State has failed to comply with subsection (a) or an applicable regulation, he shall notify the Governor of such State of the noncompliance and shall request the Governor to secure compliance. If within a reasonable period of time the State fails or refuses to secure compliance, the Secretary shall have the authority (1) to refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; (2) to exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); or (3) to take such other action as may be provided by law.

(c) When a matter is referred to the Attorney General pursuant to subsection (b), or whenever he has reason to believe that a State is engaged in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

SEC. 107. DEFINITIONS AND SPECIAL RULES

(a) SECRETARY.—For purposes of this title, the term "Secretary" means the Secretary of Health, Education and Welfare or his delegate. The term "Secretary of Health, Education and Welfare" means the Secretary of Health, Education and Welfare personally, not including any delegate.

(b) ENTITLEMENT PERIOD.—For purposes of this title, the term "entitlement period" means the one-year periods beginning on July 1, of 1972, 1973, 1974, 1975, and 1976.

(c) DISTRICT OF COLUMBIA.—

(1) TREATED AS STATE.—For purposes of this title, the District of Columbia shall be treated as a State, and any reference to the Governor of a State shall, in the case of the District of Columbia,

be treated as a reference to the Commissioner of the District of Columbia.

SEC. 108. REGULATIONS

(a) General Rule.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the provisions of this title.

(b) Administrative Procedure Act To Apply.—The rulemaking provisions of subchapter II of chapter 5 of title 5 of the United States Code shall apply to the regulations prescribed under this title for entitlement periods beginning on or after July 1, 1972.

SEC. 109. JUDICIAL REVIEW

(a) Petitions for Review.—Any State which receives a 60-day notice under section 105(b) may, within 60 days after receiving such notice, file with the United States court of appeals for the circuit in which such State is located a petition for review of the action of the Secretary. A copy of the petition shall forthwith be transmitted to the Secretary; a copy shall also forthwith be transmitted to the Attorney General.

(b) Record.—The Secretary shall file in the court the record of the proceeding on which he based his action, as provided in section 2112 of title 28, United States Code. No objection to the action of the Secretary shall be considered by the court unless such objection has been urged before the Secretary.

(c) Jurisdiction of Court.—The court shall have jurisdiction to affirm or modify the action of the Secretary or to set it aside in whole or in part. The findings of fact by the Secretary, if supported by substantial evidence contained in the record, shall be conclusive. However, if any finding is not supported by substantial evidence contained in the record, the court may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous actions. He shall certify to the court the record of any further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence contained in the record.

(d) Review by Supreme Court.—The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28, United States Code.

TITLE II—CREDIT AGAINST THE INDIVIDUAL INCOME TAX FOR TUITION PAID FOR THE ELEMENTARY OR SECONDARY EDUCATION OF DEPENDENTS

SEC. 201. TUITION PAID FOR ELEMENTARY OR SECONDARY EDUCATION

Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to credits allowable) is amended by redesignating section 42 as section 43, and by inserting after section 41 the following new section:

"SEC. 42. TUITION AND FEES PAID FOR ELEMENTARY OR SECONDARY EDUCATION

"(a) General Rule.—There shall be allowed to an individual, as a credit against the tax imposed by this chapter for the taxable year, an amount determined under subsection (b), for tuition paid by him to any private nonprofit elementary or secondary school during the taxable year for the elementary or secondary education of any dependent with respect to whom the taxpayer is allowed an exemption for the taxable year under section 151(e).

"(b) LIMITATIONS.—The amount allowable under subsection (a) for the taxable year with respect to any dependent shall not exceed the lesser of—

"(1) 100 percent of the tuition paid by the taxpayer during the taxable year for the elementary or secondary education of such dependent, or

"(2) $200.

"(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) TUITION.—The term 'tuition' means any amount required for the enrollment or attendance of a student at a private nonprofit elementary or secondary school. Such term does not include any amount paid directly or indirectly for meals, lodging, or similar personal or family expenses. If the amount paid for tuition includes any amount (not separately stated) for an item described in the preceding sentence, the portion of the amount paid for tuition which is attributable to such item shall be determinded under regulations prescribed by the Secretary or his delegate.

"(2) PRIVATE NONPROFIT ELEMENTARY OR SECONDARY SCHOOL.—The term 'private nonprofit elementary or secondary school' means an educational institution—

"(A) which is described in sections 501(c)(3) and 170(b)(1)(A)(ii) and which is exempt from tax under section 501(a),

"(B) which regularly offers education at the elementary or secondary level, and

"(C) attendance at which by students who are subject to the compulsory education laws of the State satisfies the requirements of such laws.

"(3) ELEMENTARY OR SECONDARY EDUCATION.—The term 'elementary or secondary education' does not include education at a level beyond the 12th grade.

"(d) REGULATIONS.—The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the provisions of this section."

(b) The table of sections for such subpart A is amended by striking out the item relating to section 42 and inserting in lieu thereof the following:

"Sec. 42. Tuition and fees paid for elementary or secondary education.
"Sec. 43. Overpayments of tax."

SEC. 202. EFFECTIVE DATE

The amendments made by this Act shall apply to taxable years beginning after December 31, 1971.

EXPLANATION OF H.R. 16141, THE "PUBLIC AND PRIVATE EDUCATION ASSISTANCE ACT OF 1972"

By Hon. Hugh L. Carey

In 1970, there were 43.5 million students in public elementary and high schools, and 5.1 million students in private elementary and high schools.[1]

Recently, public attention has been directed at the financial problems of both public and private schools. In the case of public schools, court decisions have challenged the basic pattern of local financing of public education. These decisions have held that this pattern of financing is constitutionally impermissible when it results in differences in the amount of funds spent Statewide on the education of public school students. Without passing on the constitutional correctness of these decisions, the effect sought to be achieved by them is desirable and it would seem appropriate that Federal funds be made available to assist States in equalizing the educational opportunities of public school students.

In the case of private schools, data indicate that while many private schools are experiencing increasing operating costs, there has also been a decline in student enrollment in such schools. In many cases, the increased costs must be passed along to parents. Since these parents are already supporting public education through the payment of taxes and are also relieving public schools of the expense of educating their children, a strong case can be made for Governmental assistance to these parents.

It is, therefore, proposed that legislation be enacted which would contain the following two basic provisions: (1) Federal payments to States to assist in the equalization of educational opportunities of students in public elementary and secondary schools; and (2) $200 tax credit with respect to each child maintained in a private elementary or secondary school.

The Federal payments to States would not exceed $2.25 billion and would average approximately $50 per public school student. The tax credit for private school education would result in a revenue loss of approximately $584 million. The total cost of the proposed legislation would therefore not exceed $2.834 billion.

The assistance payment to States for the equalization of educational opportunities would be structured to provide a Federal matching payment for State expenditures made for the purpose of equalizing elementary and secondary school educational opportunities. Under this approach minimum Federal standards would be established for determining which State payments are made for the prescribed purpose. The Federal matching payments would then be based on the amount of qualifying State payments. Thus, for example, the Federal Government could pay a State 50¢ for each $1 spent by the State for the qualified purpose. For this purpose, the amount of the Federal payments would not be included in determining the amount of State payments qualifying for Federal matching. Additionally, the Federal payments would have to be spent by the States in the same program which qualifies the States for matching payments.

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[1] During the same period, there were 2.3 million students in public kindergartens and 0.4 million students in private kindergartens.

In order to prevent a disproportionate benefit from accruing to those States which have a unitary method of financing education (e.g., where the State totally finances public education by paying an equal amount per pupil to all schools within the State), the Federal matching payments could be limited to those State payments which do not exceed 10 percent of the total non-Federal funds spent in the State for public elementary and secondary education. The total amount of State and local funds spent for public elementary and secondary education is approximately $45 billion for 1971–1972. Ten percent of this figure would be $4.5 billion, and accordingly Federal matching payments of 50¢ for each qualified $1 of State spending could not exceed $2.25 billion. In future years, when State and local expenditures may exceed $45 billion, the $2.25 billion limit on Federal assistance for this program could be maintained by reducing the matching payment from 50 percent of the State payment. A general maintenance of effort provision should be included to assure that States do not reduce their educational expenditures.

The key feature of this proposal is the formula for determining whether a State educational expenditure program qualifies for Federal matching payments. Two basic standards will be provided. The first standard will apply where a significant portion of public school financing is raised locally. This standard is designed to assure that the State payment program will serve to reduce the impact on school financing of differentials in the capacity of different areas within a State to raise funds. It will be based on the following computations. First, the total State and local expenditures for public elementary and secondary education (excluding the amount to be distributed under the qualified equalization program) is divided by the number of public school students in the State. This yields the average per student expenditure. Second, the total State and local education expenditures is divided by the assessed value of all assessable real estate in the State [2] to determine the property tax rate necessary to yield the required expenditures. The foregoing computations are designed to determine the average State-wide education expense per student and the average State-wide property tax rate necessary to pay the total expense. Once these figures are computed, they must be applied on a district-by-district basis to determine the allocation of State equalization funds.

First, the number of elementary and secondary public school students in each school district in the State is multiplied by the average State per student expenditure to obtain the hypothetical expenditure for each district (as if it were making expenditures at the State average). Second, the State-wide property tax rate necessary to support public education is multiplied by the assessed valuation of property within each school district. The resulting product represents the hypothetical property tax that would be raised by the district if it imposed a property tax at the average State rate necessary to finance public education. This product is subtracted from the hypothetical educational expenditure for the district. This sum is then to be reduced by the State contribution to the district for education (other than contributions under the qualified equalization program). The final figure obtained (if it is greater than 0) represents the gap between the district's presumed ability to raise education revenue and its need for such revenue. If, with respect to a district, there is no gap, no State equalization program payments may be made to that district. State payments to districts with a gap must be allocated among them proportionally. Thus, if the total of positive figures for districts in the State is $1 billion and District X has a positive figure of $100 million, 10 percent of the State qualified equalization program payments must go to District X.

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[2] It is, of course, necessary for this purpose that the assessed value of all real estate within the State bear an equal ratio to fair market value.

It can be appreciated that the standard described above has no ready application to a State in which the bulk of financing for public education comes from the State government itself, and not, as is the more common pattern, from local revenue-raising bodies. Since a strong case can be made for the efficacy of Statewide financing of public education,[3] the proposed legislation will qualify a State program under a separate standard than the one based on the revenue raising abilities of localities. Under this second standard, a State program will qualify if it is supplying at least 90 percent of the non-Federal funding of public education within each school district in the State. In other words, the localities will be limited to supplementing State funds by 10 percent of the State funds supplied. The funds supplied by the State to each school district may either be: (1) an equal amount per student; or (2) differential amounts per student if the Secretary of Health, Education, and Welfare determines that the differentials are consistent with a program of equalizing educational opportunities of public school students within the State.

These formulas are not intended to be the only ones which a State may use if it is to have a qualified equalization program. The Secretary of Health, Education and Welfare will have authority to approve other plans so long as they are at least as effective in equalizing educational opportunities as the plan described above.

The $200 tax credit will only be available with respect to instruction in a private school which satisfies State requirements for elementary or secondary education, and only if the private school qualifies for exemption from tax under section 501(c)(3) of the Internal Revenue Code. The credit will be fully refundable, and accordingly will be paid to an individual whose tax liability for the year is less than the credit to be made available.

CONGRESS OF THE UNITED STATES,
JOINT COMMITTEE ON INTERNAL REVENUE TAXATION,
Washington, D.C., August 2, 1972.

Hon. HUGH L. CAREY,
House of Representatives,
Washington, D.C.

DEAR MR. CAREY: You have asked me for an estimate of the total cost of a proposal containing the following two basic provisions: (1) Federal payments to States to assist in the equalization of educational opportunities of students in public elementary and secondary schools; and (2) a tax credit, not to exceed $200 per student, for tuition and fees paid for dependents attending private, nonprofit elementary and secondary schools.

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[3] The President's Commission on School Finance, Schools, People and Money, XII (1972).

My staff has estimated that the Federal payments to States would not exceed $2.25 billion and would average approximately $50 per public school student. The cost of the $200 tax credit for tuition (excluding fees) paid would not exceed $584 million. The total cost of the proposal (excluding the portion of the credit attributable to fees) would, therefore, not exceed $2.834 billion. Information available to the staff at this time as to fees suggests that that item will not appreciably increase the total cost of the proposal.

The enclosed table is a breakdown of the $584 million estimated cost of the tax credit.

Sincerely yours,

LAURENCE N. WOODWORTH.

Enclosure.

ESTIMATED REDUCTION IN FEDERAL INDIVIDUAL INCOME TAX LIABILITY UNDER A PROPOSAL TO GRANT A TAX CREDIT AND/OR PAYMENT EQUAL TO THE AMOUNT OF TUITION PAID FOR DEPENDENTS ATTENDING PRIVATE NONPROFIT ELEMENTARY AND SECONDARY SCHOOLS BUT NOT TO EXCEED $200 PER DEPENDENT STUDENT

1973 Tax Law and Estimated Enrollment and Tuition Levels for School Year 1972–73

Adjusted gross income class	Amount of tax credit and/or payment (millions)
$0 to $3,000	$3
$3,000 to $5,000	10
$5,000 to $7,500	52
$7,500 to $10,000	107
$10,000 to $15,000	180
$15,000 to $20,000	132
$20,000 to $25,000	46
$25,000 to $50,000	43
$50,000 and over	11
Total	584

TEXT OF H.R. 13020 AND H.R. 13495

TEXT OF H.R. 13020, INTRODUCED ON FEBRUARY 8, 1972, BY MR. BYRNES OF WISCONSIN, FOR HIMSELF AND MR. GERALD R. FORD, AND H.R. 13495, INTRODUCED ON MARCH 1, 1972, BY MR. BURKE OF MASSACHUSETTS, FOR HIMSELF AND MR. MILLS OF ARKANSAS, IDENTICAL BILLS TO AMEND THE INTERNAL REVENUE CODE OF 1954 TO ALLOW A CREDIT AGAINST THE INDIVIDUAL INCOME TAX FOR TUITION PAID FOR THE ELEMENTARY OR SECONDARY EDUCATION OF DEPENDENTS.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to credits allowable) is amended by redesignating section 42 as section 43, and by inserting after section 41 the following new section:

"SEC. 42. TUITION PAID FOR ELEMENTARY OR SECONDARY EDUCATION

"(a) General Rule.—There shall be allowed to an individual, as a credit against the tax imposed by this chapter for the taxable year, an amount determined under subsection (b), for tuition paid by him to any private nonprofit elementary or secondary school during the taxable year for the elementary or secondary education of any dependent with respect to whom the taxpayer is allowed an exemption for the taxable year under section 151(e).

"(b) Limitations.—

"(1) Amount per dependent.—The amount allowable under subsection (a) for the taxable year with respect to any dependent shall not exceed the lesser of—

"(A) 50 percent of the tuition paid by the taxpayer during the taxable year for the elementary or secondary education of such dependent, or

"(B) $400.

"(2) Reduction of credit.—The aggregate amount which would (but for this paragraph) be allowable under subsection (a) shall be reduced by an amount equal to $1 for each full $20 contained in the amount by which the adjusted gross income of the taxpayer (or, if the taxpayer is married, the adjusted gross income of the taxpayer and his spouse), for the taxable year exceeds $25,000. For purposes of this paragraph, marital status shall be determined under section 143.

"(c) Definitions and Special Rules.—For purposes of this section—

"(1) Tuition.—The term 'tuition' means any amount required for the enrollment or attendance of a student at a private nonprofit elementary or secondary school. Such term does not include any amount paid directly or indirectly for meals, lodging, transportation, extracurricular activities, supplies, equipment, clothing, or personal or family expenses. If the amount paid for tuition includes any amount (not separately stated) for an item described in the preceding sentence, the portion of the amount paid for tuition which is attributable to such item shall be determined under regulations prescribed by the Secretary or his delegate.

"(2) Private nonprofit elementary or secondary school.—The term 'private nonprofit elementary or secondary school' means an educational institution—

"(A) which is described in sections 501(c)(3) and 503(b)(2) and which is exempt from tax under section 501(a),

"(B) which regularly offers education at the elementary or secondary level, and

"(C) attendance at which by students who are subject to the compulsory education laws of the State satisfies the requirements of such laws.

"(3) Elementary or secondary education.—The term 'elementary or secondary education' does not include education at a level beyond the 12th grade.

"(d) APPLICATION WITH OTHER CREDITS.—The credit allowed by subsection (a) to the taxpayer shall not exceed the amount of tax imposed on the taxpayer for the taxable year by this chapter, reduced by the sum of credits allowable under this subchapter (other than under this section and sections 31 and 39).

"(e) REGULATIONS.—The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the provisions of this section."

(b) The table of sections for such subpart A is amended by striking out the item relating to section 42 and inserting in lieu thereof the following:

"Sec. 42. Tuition paid for elementary or secondary education.
"Sec. 43. Overpayments of tax."

SEC. 2. The amendments made by this Act shall apply to taxable years beginning after December 31, 1971.

REPORT OF OFFICE OF MANAGEMENT AND BUDGET ON H.R. 13495

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., June 21, 1972.

Hon. WILBUR D. MILLS,
Chairman, Ways and Means Committee, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Office of Management and Budget on H.R. 13495, a bill to amend the Internal Revenue Code of 1954 to allow a limited credit against the individual income tax for tuition paid for the nonpublic elementary and secondary education of dependents.

As you know, the tax credit device is one of several alternatives that are being studied by the Administration as we search for ways to deal with problems of finance for both public and nonpublic schools. Hopefully, this work will produce a feasible alternative that deals with these problems in a broad and comprehensive way.

The following comments are offered in response to your specific request for views on H.R. 13495.

H.R. 13495 authorizes a credit to an individual against his accrued income tax for tuition paid to private nonprofit elementary and secondary schools for the education of any dependent for whom the taxpayer is authorized to take an exemption. Limitations on the credit are:

That it shall not exceed the lesser of 50% of the tuition paid or $400 for each dependent; and

That it shall be reduced $1 for every $20 by which the adjusted gross incomes exceeds $25,000.

The credit can be claimed only for "tuition" expenditures, and does not include amounts paid directly for meals, lodging, transportation, extra-curricular activities, supplies, equipment, clothing, or personal or family expenses.

The credit allowed shall not exceed the amount of the tax imposed.

We support the intent of H.R. 13495. Alternatives to the public school which support the diversity of our society should be preserved.

While we believe nonpublic schools should be supported, the tax credit authorized by H.R. 13495 needs to be modified in several respects.

First, rather than provide a 50% credit up to $400, we would urge the use of a 100% credit up to $200 per child per year. The 50% credit up to $400 contained in H.R. 13495 would induce schools to raise tuition rates in order to increase their revenues by capturing the credit. In so doing, the schools would reduce the number of low and moderate income families who could afford to send their children to nonpublic schools. The "100 percent up to $200" credit gives dollar-for-dollar credit and may thus completely or nearly completely pay for tuition in the case of many low income families with children having scholarships or attending low tuition schools. The 50 percent credit up to a total credit of $400 would give half-benefit on tuitions up to $800, but would be of less benefit to low-income low-tuition families and of greater benefit to higher-income higher-tuition families.

Second, we would recommend that the cutoff point for the full tax credit be reduced to $18,000 adjusted gross income to be comparable with the deductions authorized for child care costs by the Revenue Act of 1971. The majority of taxpayers whose dependents attend nonpublic schools have incomes below $18,000.

Third, we would recommend that consideration be given to allowing credit for all tuition *and* fees paid for by parents in both public and nonpublic schools. The basis for this change is an attempt to limit inequitable dual burdens as far as possible.

Fourth, we suggest that the Committee give consideration to ways that the benefits of the tax credit might be made available to families who pay no income tax.

Finally, if this legislation is enacted, a corresponding offset either by way of expenditure reduction or revenue increase would have to be found, so that the Treasury would not suffer the revenue loss that this proposal requires.

With these changes, the tax credit becomes a much more equitable and more efficient mechanism for the support of nonpublic schools. We share the Committee's concern about this problem and urge you to consider the changes described above. With these changes, the bill would be consistent with Administration policy.

Sincerely,

CASPAR W. WEINBERGER, *Director.*

The CHAIRMAN. Our leadoff witnesses this morning are representatives of the administration. Witnesses from the general public are scheduled for appearances before the committee beginning tomorrow.

We will recess on Friday after the hearing because the Congress itself will be in recess over Labor Day. The balance of the public witnesses will be heard sometime after Labor Day.

We are pleased to have this morning as our witnesses the Honorable George P. Shultz, Secretary of the Treasury; Hon. Elliot L. Richardson, Secretary of Health, Education, and Welfare; and Hon. Caspar W. Weinberger, Director of the Office of Management and Budget.

We are pleased to have you with us this morning. I understand you would like to complete your three statements before being interrogated.

Secretary SHULTZ. Yes, sir.

The CHAIRMAN. Secretary Shultz, you are recognized.

STATEMENT OF HON. GEORGE P. SHULTZ, SECRETARY OF THE TREASURY; ACCOMPANIED BY HON. FREDERIC W. HICKMAN, ASSISTANT SECRETARY FOR TAX POLICY

Secretary SHULTZ. Thank you, Mr. Chairman and members of the committee. I welcome this opportunity to appear before you in connection with a subject which I believe to be very important, aid to nonpublic schools.

My testimony will be confined to title II of H.R. 16141. That is the portion of the bill which would give parents of students in nonpublic elementary and secondary schools a credit of up to $200 against their income taxes for tuition paid to those schools.

The administration strongly supports the goals of title II.

We believe that the existing system of nonpublic schools, which educates one-tenth of our children, is a vital national asset. The nonpublic school system provides a diversity which is healthy. It provides, in many instances, a proving ground for innovation and experimentation which is of great benefit to public education and the public generally. It shoulders a heavy burden of costs which would otherwise fall on the public generally. Large-scale closings of nonpublic schools, if allowed to continue, could be accompanied by disruption of countless communities and neighborhoods in which nonpublic schools are sources of pride and stability. We must do all that we can to prevent this from happening.

A tax credit is not a complete answer to the problems of nonpublic school parents. But it can help in a major way and it can be placed in operation quickly. We believe the credit proposed to be consistent with our existing system of tax deductions. The burden of maintaining private schools is carried primarily by the parents of students, by alumni and friends of the schools, and, in the case of sectarian schools, by contributors to the church or synagogue involved.

The Internal Revenue Code has since 1916 allowed deductions to alumni and friends for contributions to nonprofit nonpublic schools, and to members of religious congregations for church or synagogue contributions which are, in fact, used to support such schools. The present bill would extend similar benefits to the parents who are the third principal class of supporters of such schools. The fact that the tax benefit would come in the form of a credit, rather than a deduction, would serve to make the benefit more uniformly available to all taxpayers, regardless of their marginal tax rates. We do not believe the use of a credit as distinguished from a deduction raises any constitutional problems.

On June 21 of this year, in a letter to you from Mr. Weinberger, the Director of the Office of Management and Budget, the administration pledged its support to the principle of a tax credit to parents for nonpublic school tuition. At that time we indicated that the proposals then under consideration needed modification in several respects. We are pleased to note that the most important of the modifications which we suggested has been adopted in H.R. 16141. That recommendation related to the amount of the credit. We proposed that there be given a credit for 100 percent of tuition up to $200 per child per year, instead of a credit for 50 percent of tuition up to $400 per child per year, as then proposed. Our recommendation was intended to give greater benefits to lower income tax families and to minimize the amount of tuition increases which might result.

We made two other recommendations, however, which we believe to be important and which have not been incorporated in the present bill. They are:

First, we recommended that the credit should be gradually phased out for families with adjusted gross incomes over $18,000. This would make the credit comparable with the deductions authorized for child care expenses under present law. The majority of taxpayers whose dependents attend nonpublic schools have incomes below $18,000.

Second, we suggest that an effort be made to devise a way that the credit or a comparable benefit can be made available to families who pay no income tax. We are puzzled by H.R. 16141 in this respect because the text of the explanation in the committee print indicates that a refundable credit is to be provided for this purpose, but the text of the bill itself fails to do so.

If the committee does indeed favor a refundable credit, we urge that it give careful attention to the question of whether there may be constitutional objections to the refundable feature, and we recommend that such a feature be made separable from the basic credit so that the constitutionality of the latter is not endangered. We believe a refundable credit would be desirable. However, if it should not be constitutionally possible, we believe that a nonrefundable credit is nonetheless desirable. A nonrefundable credit could be utilized by the great majority of nonpublic school parents. There are relatively few parents of nonpublic school students who pay no Federal income tax. Scholarship programs, or other forms of subsidized tuition, presently take care of many such students and would hopefully continue to do so.

There is one final, but important, constraint. If this legislation is enacted, a corresponding offset either by way of expenditure reduction or revenue increase would have to be found. I shall not add to Mr. Weinberger's testimony on this aspect.

The committee print explaining the bill contains a revenue estimate by the Joint Committee on Internal Revenue Taxation. It estimates an annual revenue loss of $584 million. We believe that to be a realistic estimate for a refundable credit, assuming no increases in tuition. However, there will surely be tuition increases, as one of the purposes of a tuition credit is to permit schools to raise tuition without losing students. It seems safe to assume that all schools will raise their tuition to at least $200. As the bill is now drafted without a refundable provisions, we believe the revenue loss would be $790 million per year. If a refundable provision were added, the revenue loss would rise to an estimated $970 million.

In closing, Mr. Chairman, let me repeat that although we suggest modifications to H.R. 16141, and must condition our support on the expectation that Congress will make adequate, offsetting adjustments in other expenditures, we are strongly in favor of the purposes of title II of the bill. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Secretary Shultz.
Secretary Richardson.

STATEMENT OF HON. ELLIOT L. RICHARDSON, SECRETARY, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Secretary RICHARDSON. Thank you, Mr. Chairman. It is a pleasure to be here this morning to discuss the financing of public and nonpublic elementary and secondary education.

Secretary Shultz has already discussed the title II provision of H.R. 16141 which would authorize tax credits for parents of nonpublic school children to cover at least a portion of the tuition.

My remarks will focus on title I of H.R. 16141 and the issues surrounding the financing of public elementary and secondary schools.

FINANCING AMERICAN EDUCATION

First, let me briefly sketch the perspective which we in the administration bring to education finance and the many problems it poses.

Constitutionally and traditionally, education in the United States is primarily a State and local responsibility. From the time of the Articles of the Confederation until World War I, the Federal Goverment's role was confined to land grants for both elementary and secondary schools and institutions of higher education as well as the collection and dissemination of information about education. This latter function was for many years the principal activity of the Commissioner of Education, a post created in 1867. Programs related to vocational education, federally impacted areas, and research were added in the first half of this century. Only in the last decade and a half has the Federal Government become deeply involved in major programs of support for education, though still in a secondary and supporting role.

The Department of Health, Education, and Welfare now administers well over 100 programs involving various aspects of our education system. With respect to higher education these programs deal with both public and nonpublic institutions. In elementary and secondary education, HEW's programs concentrate on public institutions, but give substantial aid to pupils enrolled in nonpublic schools by assuring their participation in the special Federal programs operated through the public schools.

Because Federal involvement has come about gradually, it was, I believe, almost inevitable that Federal programs would approach educational needs on a piecemeal basis. While the categorical approach was appropriate in the early stages of Federal support, we now need to bring about a substantial consolidation and simplification of the many programs now in effect so that local agencies may deal more effectively with their educational needs.

To accomplish this, the administration has proposed special education revenue sharing, introduced in April 1971, and currently pending before the Education and Labor Committee as H.R. 7796.

FACTORS SUGGESTING THE NEED FOR SCHOOL FINANCING REFORM

The decision in *Serrano* v. *Priest* in California, handed down almost exactly 1 year ago, was the first of a series of court decisions which, if upheld, may force the States to realine their school finance systems to provide greater equalization among school districts. Most of these revisions would be expensive, and the pressure for new sources of revenue is likely to be intense. Even if the decisions are not upheld by the Supreme Court, which has agreed to review the Texas case (*Rodriguez* v. *San Antonio Independent School District*) this fall, in some States the State constitution may still require such action, and in many the momentum which began with *Serrano* may continue even in the absence of Court mandates.

Property tax levies have reached the point of taxpayer revolt in several States. School bond issues and tax levies have been defeated with increasing frequency. The consequence has been school closings in some areas, threats of closings in others, and widespread public uncertainty in many more. The problem has been compounded by financial crises in the nonpublic schools which have brought closings and placed or threaten to place additional burdens on the public schools.

Problems in school financing did not spring up overnight nor has our concern for them. Four years ago the Department of Health, Education, and Welfare funded a study known as the National Education Finance Project. This project embraced a massive survey of our present school finance system and was designed to build a base of information and to propose alternatives which could be helpful in creating a more effective system.

Over 2 years ago the President appointed a School Finance Commission to recommend possible Federal approaches to the financing of elementary and secondary education. He also appointed a special Nonpublic Education Panel as a part of the Commission to look at the crisis in nonpublic education and to report separately on possible Federal roles in that area. The National Education Finance Project reported last fall, the President's Commission in March of this year, and the Nonpublic Panel in April.

In his state of the Union message this year the President placed special emphasis on the school finance issue. The President set forth three basic objectives of educational finance reform:

1. A fair and adequate system of school finance;
2. Property tax relief; and
3. Preservation of local control of education.

In addition, he has on several occasions indicated that he will do everything constitutionally possible to assure the maintenance of a viable nonpublic educational system.

As part of a broad review directed at arriving at sound administration proposals, the President asked the Advisory Commission on Intergovernmental Relations to make recommendations on possible approaches toward meeting these objectives. The Commission is scheduled to report later this year. Meanwhile, administration task forces are examining the issues and available data. Since the work of these task forces is not yet completed, we do not now have a final recommendation to present to the Congress. Our work continues so that we may bring specific proposals before the Congress at a later date.

PUBLIC AND PRIVATE EDUCATION ASSISTANCE ACT OF 1972, H.R. 16141

Having emphasized our continuing efforts with regard to the problems of financing elementary and secondary education, I would like to devote the remainder of my testimony to a consideration of title I of H.R. 16141, the bill introduced by Mr. Carey and yourself, Mr. Chairman, on August 2. In spite of the limited time we have had to examine this bill, we have tried to give it a full analysis.

Achieving intrastate equalization

One of the stated purposes of H.R. 16141 is to redress the inequitable distribution of resources for elementary and secondary education among the local educational agencies within a State. The bill recognizes that full State assumption of school financing is one approach to intrastate equalization. It differentiates between the two jurisdictions in which 90 percent or more of public education funds come from the jurisdiction (Hawaii and the District of Columbia) and the 49 States in which lesser amounts originate at that level. Under H.R. 16141 the funds in full-assumption jurisdictions are considered to have achieved equalization if they are distributed on an equal per pupil basis or on a basis of differential needs meeting the Secretary's criteria.

In the case of those States not having full assumption, it is more difficult to achieve intrastate equalization. The measure of need embodied in the bill is fairly simple and uses factors familiar to the States. However, one of these factors—assessed property valuation—has been a major source of disparities in the current system. The situation would be exacerbated in this case because the bill does not require true value uniform assessments, although the explanatory statement of the bill indicates that these are necessary. The use of actual assessed valuations would encourage low assessments and would allow greater inequities than the bill is intended to correct. Most States have not developed adequate systems for making true value assessments.

Providing property tax relief

Local property taxes produce about $40 billion in revenue per year, of which approximately one-half is used for financing elementary and secondary education. The rapid growth in educational expenditures in the past two decades has been borne in the largest part by increases in the property tax.

As I noted earlier, the high incidence of property tax has in many communities become intolerable, and taxpayers have protested against further increases. Most experts agree that property taxes impact heavily on the poor, the aged, and others with fixed incomes, due to increases in property valuations while their incomes remain unchanged. The President has included relief of property taxes on his list of school finance objectives. H.R. 16141 does not address this priority.

CONCLUSION

In conclusion, Mr. Chairman, our assessment of title I of H.R. 16141 is that it offers some interesting features which merit consideration in our examination of the appropriate Federal role in reform of elementary and secondary school finance. In view of the inadequacies pointed out in my statement and the fact that we are still intensively engaged in the review and analysis of all aspects of this very complex subject in order to determine our own recommendations, the administration is unable to support title I of this legislation. We hope to work with the Congress as our review and analysis of school finance continues.

I would be happy to answer any questions which the committee may have.

The CHAIRMAN. Thank you, Secretary Richardson.

Mr. Weinberger, we are pleased to have you with us this morning, also.

STATEMENT OF HON. CASPAR W. WEINBERGER, DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET

Mr. WEINBERGER. Thank you, Mr. Chairman.

We look forward to your questions at the conclusion of our testimony.

Mr. Chairman and members of the committee: I am appearing before you today in response to your invitation to discuss H.R. 16141, the proposed Public and Private Education Assistance Act of 1972. I would like to discuss this bill in the context of the overall budgetary outlook. Secretary Richardson and Secretary Shultz have already discussed the specific provisions of the bill.

As I indicated in my letter of June 21 to you, Mr. Chairman, the administration supports the purpose of title II, allowing parents to receive Federal income tax credit for the tuition costs of sending their children to a nonpublic elementary or secondary school. I am especially pleased to note that H.R. 16141 does incorporate my suggestion concerning the size of the credit. Your adoption of our approach to the size of the credit will, in my judgment, provide greater benefits to low income families while avoiding the creation of an incentive for nonpublic schools to raise their tuition to $400 per year.

I would hope that as the committee gives further attention to title II of the bill, they would give careful consideration to the other suggestions I made in my letter, especially the provision concerning the phasing out of the grant.

I would like to devote the rest of my comments to my concern about the cost of H.R. 16141. If the committee and the Congress were to act favorably on the bill, they would create a new Federal financial promise in excess of $3 billion per year. Title I provides for annual spending of $2.25 billion per year for each of the next 5 years. At the same time, title II would have the effect of reducing Federal revenues by about $750 million per year.

We believe our estimate is conservative as indicated by Secretary Shultz a few moments ago.

The combined effect of these two titles on the Federal budget would be to add $3 billion per year to budget spending; $15 billion during the 5-year entitlement period specified in title I of the bill.

As Director of the Office of Management and Budget, I know the Federal Government cannot afford this $15 billion program over the next 5 years unless some major reductions are made in existing programs.

The budget policy of this administration has been to adhere to the full-employment budget concept, limiting outlays so that the budget would be in balance if the economy were at full employment. We consider this policy to be essential if we are to avoid stimulating the economy into another round of inflation, such as the one that was caused by the successive full-employment deficits of 1966–68.

In the current fiscal year, as you know, the President's budget proposed program levels that would have led to a balanced full-employment budget. The total figure was approximately $245 billion. Looking ahead, to 1974 and implicitly to the other years affected by this proposal, we can expect that the existing revenue system would generate from $15 to $20 billion more in full-employment revenues. This will require limiting fiscal 1974 expenditures to the $260 to $265 billion range.

We estimate that spending for open-ended programs, fixed costs, and end of fiscal year 1973 balances in budget authority will amount to $205 billion in 1974. This leaves just $55 to $60 billion for all the other Federal outlays, if we are to maintain a full-employment balance. These estimates make no provision for any congressional addition to the cost of programs proposed in the 1973 budget except those enacted before June of this year. The margin for new programs in this figure is virtually nonexistent; the same constrained situation is characteristic of the years after 1974.

The message is simple. There simply is not very much money available for new Federal programs. Unless the Congress wants to bring on another round of inflation by breaking the full-employment budget or increase taxes to match the new expenditures it proposes, it is necessary when putting forward a new program to have in mind old programs which can be eliminated to free funds now committed. No programs have been suggested for elimination.

This administration opposes proposals that will increase the full-employment budget deficit now that it is clear we should not have any further fiscal stimulation. We oppose proposals that will necessarily lead to higher taxes. Even desirable proposals should include suggestions as to where offsets can be found for new expenditures.

As you know, we also strongly support a rigid spending ceiling which will enable us to avoid higher taxes and higher prices. This proposal for a spending ceiling is consistent with the general view we have of the need for fiscal restraint at this time and in the future. It requires that offsets in existing programs be found to match any increases in Federal spending, certainly when they are on the order of those proposed in this bill.

The CHAIRMAN. We thank all three of you for your very fine statements to the committee.

Mr. Ullman.

Mr. ULLMAN. Thank you, Mr. Chairman.

Mr. Secretary and Mr. Director, you do not indicate in your statements any basic opposition to the procedures and principles in either title I or title II. Mr. Secretary—Mr. Richardson, what is your specific position with respect to these procedures in title I? You have not hit it right on the head. You are not in opposition to the procedures there, is that right?

Secretary **Richardson**. In the general direction that title I would take, Mr. Ullman, we are in basic agreement. We do think that there needs to be consideration of the specific questions identified and perhaps other related questions. As my statement indicates, these have to do with the problem of equalization of assessments to the extent that this is a factor in the distribution of funds.

We also think it is important to consider the place of relief of the local property tax insofar as any new fund source for the support of education is concerned. Once you begin to explore that line of thought and then a number of questions arise. There is a question, too, of the extent to which we should require equalization upon the part of the States; that is, the extent to which an equalization fund should be used to raise the overall average level of expenditures by low spending school districts up to a level nearer the higher spending school districts in the State.

There are a number of questions of this kind which under the bill presumably would be left to the discretion of the Secretary of HEW on which we now feel there is a need for further analysis.

Mr. **Ullman**. Thank you, Mr. Secretary.

Mr. Director, Secretary Shultz has indicated agreement certainly in principle to title II. Could we afford title II as a separate package?

Mr. **Weinberger**. In my letter to the chairman on June 21, Mr. Ullman, I said it would be necessary to find some offsets in existing expenditures to meet the loss of revenue that would be involved in that. We said finally if this legislation is enacted a corresponding offset either by way of expenditure reduction or revenue increase would have to be found so that the Treasury would not suffer the revenue losses that this proposal requires.

I don't believe that we are in the position of adding either new expenditures or revenue losses without some offsets. I don't think finding offsets is all that difficult, but historically we have not had any interest in reducing or eliminating old programs when we talk about adding new ones. We like this one and think it is a good, new program, but we think there should be some reductions which should be made.

Mr. **Ullman**. Would you have any specific recommendations on reductions? I agree this has high priority and you agree with that. Where would we cut?

Mr. **Weinberger**. We would be glad to include some suggestion. Some should come in some of the categorical programs we are now carrying out. We suggest in our special revenue sharing program that we eliminate a very large number of existing programs by consolidating them into a special revenue sharing act. Some of them, I think, would be good candidates for this.

Mr. **Ullman**. I want to hear from Secretary Shultz in a moment. It just seems to me that we all generally agree the Government is going to have to move in this direction in primary and secondary education, but as I perceive the problem, according to your testimony, we just can't afford it.

Mr. **Weinberger**. I think we can afford it. I just don't think we can afford it on top of everything else we are doing. Just as a starter, just sitting here responding to your questions, I think savings of that amount could be made in the impacted aid program with no injury in the United States whatsoever and perhaps the substitution of this would be a substantial improvement.

Secretary SHULTZ. I was going to suggest that you enact the $250 billion spending ceiling, enact title II of this bill, and let the President and Mr. Weinberger wrestle with how they are going to put the pieces together. I can suggest one way where that can be done.

Mr. ULLMAN. You are giving us some interesting possibilities.

Finally, Secretary Shultz, would you or Mr. Director review the assumptions that went into your economic analysis of what our budgetary situation is?

Mr. WEINBERGER. It is very brief and it is not really all that deep an analysis. It consists of projecting out the open-ended program, the 71 percent of the budget that is now uncontrollable, our various fixed costs and looking at some of the requirements remaining in the existing budget authorities, and we believe that that will run us to a total of about $205 billion in the following year's budget.

We don't want to be the cause of fostering another round of inflation nor of requiring higher taxes so that makes it very clear that we should stay within our full-employment revenues and those are widely known as being roughly in the $260 to $265 billion category, so that is where we get the amount that we feel is left, that, as I say, does not make any provision for congressional additions to existing programs.

So, you do have a very narrow, virtually nonexistent margin. That was put in to emphasize the point I was making, if we want to start a new program of high priority, fine, but let's cut out something so we are not continually adding to this total.

Mr. ULLMAN. I was addressing myself more to the economy. Secretary Shultz, you did not specifically address yourself to it, but Mr. Weinberger indicated there would be an increase of $15 to $20 billion in revenues. Do you agree with that?

Secretary SHULTZ. There are two ways to look at the revenue picture. I think it is beyond question that the economy is moving forward very strongly and more strongly than we anticipated at the beginning of the year, so the actual revenues being generated will be rising. I think Mr. Weinberger's comment had to do with the relationship between full-employment revenues for fiscal 1973 and full-employment revenues for fiscal 1974.

That is a calculation to which the actual level of operation of the economy is not relevant. You calculate what the yield would be at full employment. I have not made that calculation.

Mr. ULLMAN. Do you have an analysis of the actual increase in revenues during this period because of the pickup of the economy?

Secretary SHULTZ. We, of course, found in fiscal 1972, as we compared the actual revenue collected with the estimates, that the actuals collected were constantly running ahead of the estimates.

Now we have not made a full-dress review of our fiscal 1973 revenue estimates. We are preparing to do that as we get ready to appear before you in connection with the debt ceiling. At some time before long and we will have done that. But obviously the economy is carrying those revenue estimates upward.

We have had a change in the social security tax which has a negative impact on the revenue estimates, but they are likely to be upward. We have not done anything with fiscal 1974.

Mr. Ullman. Are you suggesting the budgetary situation looks better today than it has and possibly your estimates of deficits are excessive.

Secretary Shultz. No, what I am suggesting is that the actual revenues for fiscal 1973 may be larger than we earlier estimated, although we have not made a careful recomputation of that. I am basically extrapolating from the 1972 experience.

On the other hand, the outlay side of the picture has been alarming, certainly, and so what is happening to the deficit is another matter entirely. There seems to be the greatest of difficulty getting any kind of a handle on outlays.

The Chairman. Mr. Schneebeli will inquire.

Mr. Schneebeli. Secretary Richardson, are the parents of children in private preparatory schools eligible for this deduction? I am thinking of your prestige prep schools. Would they be eligible?

Secretary Richardson. Yes, they would be.

Mr. Schneebeli. What percentage would be included in this category?

Secretary Shultz. If I can interject, we have suggested that the bill as written now be amended to phase out the tax credit for families with incomes above $18,000 a year.

Mr. Schneebeli. There are a lot of parents with incomes of less than $18,000 a year who send their children to private prep schools.

Secretary Shultz. That is correct, but if you had the distribution of incomes by type of prep school, so to speak, you would find those above $18,000 would be disproportionately represented.

Mr. Schneebeli. The phaseout would take care of some of this problem, but not all. If you grant this to parents of students in private prep schools, how can you deny the credit to parents who send their children to college and their financial need is much greater than those who send them to prep school. It seems to me to be out of balance.

I am not too much in sympathy with this credit for prep school tuitions.

Secretary Shultz. One has to take your problems one at a time. I think the need is greater in the elementary and secondary school area and for the parents of children where the family income is less than $18,000 a year.

Mr. Schneebeli. I think you are going to get a lot of concern and criticism from the parents of college students who earn less than $10,000 who are denied any tax credit while you give it to someone whose income is $15,000 who sends their boy to Lawrenceville or Exeter.

I think you are very vulnerable in this area.

Secretary Richardson. I think it might be pointed out here, Mr. Schneebeli, the proportion of nonpublic school pupils attending what are generally called prep schools is less than 5 percent of the total number of children attending nonpublic schools.

Mr. Schneebeli. That 5 percent would still be a $75 million tax credit or loss to the Treasury.

Secretary Richardson. The credit proposed of only $200 per child represents quite a significant credit in terms of the tuitions charged by inner city parochial schools, but not a very significant proportion of the tuition and fees of so-called prep schools.

Mr. SCHNEEBELI. I think you are opening yourself to a lot of criticism by allowing this to parents who send their children to prestigious prep schools.

Secretary SHULTZ. The more expensive the prep schools are the more likely it is that you are going to have the family incomes represented there exceeding $18,000. So it seems to me the main problem is the private schools that have in their enrollment by and large middle-income and low-income students, and we have the observable fact that many of these schools are having to close.

That is creating quite a problem both in terms of the costs that the communities will have to bear if these schools close and in terms of the added experimentation and ideas that these schools provide through the whole educational system, let alone the particular educational needs that they are able to cater to.

Mr. SCHNEEBELI. This is certainly an area where we in Congress would subject ourselves to an awful lot of criticism, and I think we should think twice about this problem.

Mr. Weinberger, on page 4 you say, if they are to maintain a full-employment balance, "These estimates make no provision for any congressional addition to the cost of programs proposed in the 1973 Budget except those enacted before June of this year."

Mr. WEINBERGER. It says "except those."

Mr. SCHNEEBELI. In other words, anything enacted after June of this year would break your debt ceiling proposals; is that correct?

Mr. WEINBERGER. Yes, sir; unless there are reductions elsewhere. Those were the ground rules on which we made these assumptions in the three preceding paragraphs.

Mr. SCHNEEBELI. Of the three programs which Congress has not enacted before June 30—pollution, higher education, and revenue sharing—would any one of these three upset your ceiling?

Mr. WEINBERGER. We are contemplating the revenue costs——

Mr. SCHNEEBELI. You say enacted before June.

Mr. WEINBERGER. These estimates make no provision for congressional additions for cost of programs to the 1973 program except those enacted before June of this year. We are taking into consideration, in our estimate, a continuation of the cost of revenue sharing, because those were programs that were in the President's budget. We are not taking into consideration additions to that program.

Mr. SCHNEEBELI. You say "enacted before June." That was not enacted before June.

Mr. WEINBERGER. But it was proposed in the President's budget initially.

Mr. SCHNEEBELI. What about pollution and higher education?

Mr. WEINBERGER. They are proposed for continuation at their existing level, but not for the additions the Congress has been talking about.

Mr. SCHNEEBELI. The pollution bill that we have before us which the House passed was about $5 billion a year.

Mr. WEINBERGER. It is about $2 billion over the President's budget.

Mr. SCHNEEBELI. Even the modest House bill, compared with the Senate version——

Mr. WEINBERGER. I could not agree with the adjective "modest."

Mr. SCHNEEBELI. Comparatively.

Mr. WEINBERGER. That is not good enough these days.

Mr. SCHNEEBELI. We were criticized by the conservationists about being too modest in our authorization bill.

Mr. WEINBERGER. I have found we cannot escape criticism.

Mr. SCHNEEBELI. Both the higher education and the pollution budget levels have increased.

Mr. WEINBERGER. We think the $6 billion we put forward for pollution control is not only a good round figure but is an amount that can do the job and is proportionate to the other needs of the country.

The CHAIRMAN. Mr. Corman will inquire.

Mr. CORMAN. I understand the administration's recommendation is that we cut half a billion dollars off private education.

Mr. WEINBERGER. No, sir; that is not what I understand.

Mr. CORMAN. I understood you to say you do support the $200 tax credit, and that is between $750 million and $980 million annually, depending on the refundability and those people who do not pay taxes. You further suggested that it should come off Federal funds that go for public education. Did I misunderstand you?

Mr. WEINBERGER. I said that was one possible source to look for, but I did not say that was the only source to look for, and I did think there were many narrow categorical programs which were not in my opinion doing as good for education as a whole as this particular proposal.

Mr. CORMAN. I believe someone said a while ago that the logical place to look for a cut was in Federal funds going for Federal education. Am I right or wrong?

Mr. WEINBERGER. That is one place to look, Congressman.

Mr. CORMAN. Does anyone have any further place to look?

Secretary SHULTZ. Let me repeat, first you enact a quarter-of-a-trillion-dollar ceiling on spending, and then see if somehow or other the President and Mr. Weinberger can't find a measly three-quarters of a billion dollars within that quarter-of-a-trillion-dollar number somewhere.

Mr. CORMAN. We could anticipate that that is the first place you would look, and we are rather encouraged that you could find——

Mr. WEINBERGER. I don't think any anticipation is involved. We just have to look.

Mr. CORMAN. Let's look at the expenditure ceiling limit now. Where will you be able to cut spending if we impose the expenditure ceiling—the spending you would not be able to cut without an expenditure ceiling?

Secretary RICHARDSON. I might respond to that as it would affect, for example, HEW expenditures, Mr. Corman. We have consistently taken the position, on the advice of our Office of General Counsel, that we have no power to reduce or withhold, for example, any money subject to allocation among the States under a formula grant.

Under a spending ceiling enacted by the Congress, the Congress could provide that there would be a prorated reduction in that type of program.

There are also certain programs that have been made the subject of specific direction by the Congress; notably, appropriations under the Public Health Act, which may not be subject to any withholding of expenditures by executive branch action. Congress could then provide, again under a ceiling, that these programs be subject to some prorated reduction consistent with the proportion by which the ceiling was lower than the aggregate of appropriations.

There are other examples of this kind where, if the executive branch were simply to try to keep spending down by withholding money, the result would be to focus this reduction effect on a rather narrow range of programs, thus bringing about very heavy cuts in these without any corresponding cuts in those which are immune from withholding.

Mr. CORMAN. I must confess I had not before heard that the expenditure ceiling was to be coupled with the authorization for pro rata cuts in these, but I would assume we would want your recommendation as to the specific areas in which you want that authority. Could you tell us now where it is you want the authority to cut the pro rata grants to the States? Does anybody have any suggestions?

Secretary RICHARDSON. I yield to either of my fiscal colleagues.

Mr. WEINBERGER. The ceiling on expenditures that Secretary Shultz has mentioned is a very simple bill, and it can only work if it is a simple bill. It is a rigid, no-exceptions, no-loopholes kind of bill. It authorizes the expenditure of $250 billion and no more under any circumstances, and directs the President to stay within that limit.

Under those circumstances, nothing is exempt and cannot be exempt from it. That is the only way that that kind of ceiling can work. I might say in our opinion, as far as I know generally held, it is the only way in which we can prevent another wave of inflation and another round of higher taxes.

For that reason, we have recommended that it be without exception and of a very rigid nature.

Mr. CORMAN. We are not quarreling about that part. What I am trying to get from you are the areas that are involved.

Mr. WEINBERGER. There are some questions about some of the areas Secretary Richardson mentioned. Some Members of Congress have raised the question of whether there is any ability to withhold anything whatever.

There are some court cases on that. There are continual hearings and disputes whenever the President holds back any kind of expenditures, even if it is for a building for which we do not own the site.

This would remove that kind of discussion for purposes of this fiscal year and would demonstrate to the public as well as the Congress that we are concerned about causing high prices and high taxes.

Secretary SHULTZ. Mr. Corman, I can give you an example within Treasury where I believe we would get savings following this approach, and that is in the area of interest on the debt. We would get a saving for two reasons if the Congress were willing to work with the executive branch in keeping spending under a better control.

The first reason is: It would lower the deficit and therefore we would have less debt to finance.

A second reason is perhaps the more important one in a way, that the effect will be to show the country and the financial markets that the Government can control itself and can get its house in order, and, therefore, there would be a further impact on interest rates.

As you know, interest rates carry a pretty fair inflation premium since particularly the beginning of 1970, and markedly since the President's new economic policy move, interest rates have been coming down. They have been subsiding.

Now, there is a concern out there, say, a year from now, about what may happen if spending just cascades upward and out of control. If we can allay that concern, then we can keep the interest rates under control and perhaps even to get them to come down further, in which case we will make savings on the interest on the debt.

Mr. CORMAN. Other than the moral support you get from Congress, I am just trying to get the specifics straight in my own mind. For instance, as I understand it, welfare is an open-ended expenditure. We sign agreements with States that we will contribute so much to their welfare costs.

If we impose a $250 billion ceiling on you, could you cut the welfare payments to the States by 10 percent? Could you, under the law?

Secretary RICHARDSON. This could be done, Mr. Corman, if it were consistent with the terms of the spending ceiling legislation.

As Mr. Weinberger has described what the administration would like, it certainly could and would be done. Obviously, it can't be done under existing law by executive branch action.

Mr. CORMAN. I am not aware of your spelling out specific programs for which you want authority to cut. You want Congress to say you must not spend more than $250 million this year. Let's assume Congress says that. If the executive branch decides that the place to make a savings is the Federal payment for welfare, could you under the law cut that payment?

Secretary RICHARDSON. I could only say we would like to have the spending ceiling legislation written in a way that would permit it; yes, Mr. Corman.

Mr. CORMAN. Do you anticipate that that would be one of the areas of reduction?

Secretary RICHARDSON. We concurrently have underway three separate efforts to put a lid on the Federal matching of social service expenditures by welfare agencies. The appropriations provisions were added by the Senate Finance Committee. From our point of view, the best way of dealing with this is through H.R. 1, and if any of these should be enacted before the debt ceiling bill comes up here and before a spending ceiling is under consideration, then that, of course, would affect what is put in the spending ceiling bill.

Mr. CORMAN. Mr. Chairman, I have more than used my 5 minutes. When everybody else finishes, I would like to have another turn.

Mr. BYRNES. Since this hearing has sort of developed into a budget hearing and since Secretary Richardson is here, I would like to get a little information on this social services racket that has turned into a "gold rush." Do I understand that you do not feel you can control this administratively because it is a formula grant?

Secretary RICHARDSON. We could not control the expenditures by administrative action in the sense of simply prorating the amount that we would match. There may be measures still available that could tighten the basis of Federal matching. We have not explored the ultimate limits of doing this because we have felt that a far preferable means of achieving this result would be through legislation.

Mr. BYRNES. I realize the most appropriate thing is legislation. This committee and the House did act, setting a ceiling of $800 million in H.R. 1, which we passed over a year ago, but it is questionable what is happening to that legislation over in the other body. Yet you have something which is just running away with you now as far as the budget is concerned. Isn't that true?

Mr. WEINBERGER. That is certainly true; yes, sir.

Mr. BYRNES. If that is the case and the legislative situation is not clear, I wonder why we don't focus on it, and see what we can do administratively until you get appropriate legislation either through a budget ceiling or through a limitation that Congress imposes.

What I want to know, Secretary Richardson, is why you can't put a halt to some of the new agreements that are being entered into, or impose restraints through a new definition as to what shall be considered social services.

We put a definition in H.R. 1. As the law is today, almost any action of any governmental agency, it would appear, is a social service. To get a matching of $75 for every $25 under the program, it seems that all they have to do is call it "social services" and enter into an agreement with the Department of HEW.

But you have to approve these agreements or these expenditures before they are made, don't you, Mr. Secretary?

Secretary RICHARDSON. Yes.

Mr. BYRNES. Why do we have to approve?

Secretary RICHARDSON. Simply because the problem under current regulations is one of precedent. When a State has found there is the opportunity to expand Federal matching by qualifying an existing service, the opportunity then exists for other States to get the benefit of the same thing.

As you pointed out, Mr. Byrnes, this committee did enact a ceiling of $800 million with provision for continuing matching on an open-ended basis for family services and day-care centers. We had commitments from the Senate that H.R. 1 would be reported to the Senate floor no later than March 1 of this year, which would have been well ahead of the appropriations process, and that would have been the appropriate way to deal with this problem.

More recently, the Senate did enact a $2.5 billion ceiling. We had the opportunity, we thought, of holding that ceiling in conference. I don't know what will be the ultimate fate of our appropriations bill, but I think the President would be well justified in vetoing it on this account alone, as well as because of its large increases in line items.

Then again, there is now the possibility that the end will be closed through the general revenue-sharing bill.

Any of these methods would be a far more satisfactory approach to dealing with the problem than to make what are in effect quite radical changes in regulations. We have under exploration the question of what could be done and what the potential savings might be on that basis.

But we think that we should pursue first the opportunity to involve the Congress, which, of course, enacted title 4A in the first place, in a determination of what the ceiling should be and how the reductions should be allocated.

Mr. BYRNES. There seems to be some question, Mr. Secretary, as to the attitude of your Department with respect to the limitation that was put on in the Senate bill. What bill had the $2.5 billion?

Secretary RICHARDSON. It was the Labor-HEW appropriations bill.

Mr. BYRNES. Just for the record, what was your attitude with respect to that, which was then dropped in conference?

Secretary RICHARDSON. We were strongly in favor of it. I called the members of the Appropriations Subcommittee, particularly on the House side, to try to convince them that it should be retained; unfortunately, without success, since the limitation was dropped.

In addition, I sent a letter to the Congress.

Mr. BYRNES. It seems to me that with the budgetary problem we have, with the States running away with this open-ended program, and in light of the indication of legislative intent by at least one body of the Congress which has been on the record for over a year, that the Department ought to be willing to make some radical changes and not just plead inadequacy on the basis that "we are kind of waiting for Congress."

I would think unless something else is done right away that you should explore taking administrative action, even if it is radical action, because it seems to me this kind of a situation calls for such action.

Secretary RICHARDSON. We have been exploring it, Mr. Byrnes, and we will have to do this, but we have felt with the amount of activity underway currently in the Congress, moving toward the imposition of a ceiling by legislative action, that we should await a final result of that congressional action before reaching the question of what we might be able to do administratively.

Mr. BYRNES. Are you still approving new plans?

Secretary RICHARDSON. We have plans pending now. We are giving them very close, tough examination. We will presumably have to approve additional plans that even after that scrutiny are consistent with existing law.

Mr. BYRNES. Would it not be appropriate to have a moratorium on them at least for the next 3 or 4 weeks, as long as you feel there is the imminence of legislation?

Secretary RICHARDSON. We are, in effect, reviewing them very deliberately in light of this situation. The problem arises out of the fact that some States got there first and are getting the "mostest." There is an understandable feeling on the part of the States that have come along later—that they should get theirs or an approximately equal share.

It is very difficult administratively to act on these that, in a way, in effect, penalizes those who come along later. One of the congressional actions we could get would be a period for catchup, in effect, allocating a large proportion of the new money within the ceiling to the States that are significantly below the national average expenditures or below some medium.

Mr. BYRNES. I don't want to belabor the point, but I don't know that I necessarily concur that we have to have a "catchup." It seems to me we could also have a cutback. It seems to me there has been abuse of what Congress categorized as social services. I would think that area could be explored along with a more restrictive definition of what really constitutes social services within the context of the law.

If the administration can't do it, it seems to me the Congress has to. That is all, thank you, Mr. Secretary.

The Chairman. Mr. Carey will inquire.

Mr. Carey. May I commend all three of these spokesmen for the administration today for finding acceptable and desirable parts of the legislation.

First, I would like to correct what I think is a misinterpretation. Mr. Shultz, is it not true that the bill provides for payments to those whose tax liability is less than the amount of credit? From research of other bills and from my study of existing law, without language in the bill to make this tax credit specifically refundable in such cases, it would not have that effect. In the absence of a limitation on the Secretary, when the liability is less than the available credit it is then possible to make the credit fully refundable to the low-income taxpayer or to the low-income person who has no tax liability. If the administration needs more specific language to accomplish this result, I have no objection to changing the bill to meet your requirements.

The bill would apply to those below the income bracket necessary to qualify for a tax credit. I am pleased to have your recommendation in that regard.

I would quarrel, however, with your estimate of the amount necessary to bring the working poor and other low-income people into the program. You indicated that the added revenue loss would be at some $160 million to bring the poor into the program for these benefits. I think that is at variance with a staff study by the Joint Committee on Internal Revenue Taxation and with references in the final report of the President's Panel on Nonpublic Education. This panel recommends the inclusion of welfare recipients and working poor in any tuition or tax credit program. The panel estimated that the maximum additional revenue loss would be $30 million a year if these people were included at the rate of $100 per child.

If we take the bill amount of $200 per child, the added revenue loss would be a maximum of $60 million and not the $160 million that you referred to in your statement as the additional cost. So I have already saved, Mr. Weinberger, $100 million toward making this a feasible bill. I hope we can continue in that direction.

Secretary Shultz. May I comment on that?

Mr. Carey. Yes.

Secretary Shultz. The question is whether the tuition which is below $200 would be immediately raised to $200. Our estimate is that if you had a $200 refundable credit, then every school that has less than $200 tuition would raise its tuition to $200 and, therefore, you have to raise your estimate from the roughly $30 million that you had—when we agree is roughly the right estimate, assuming present tuition levels—to the higher number.

In fact, I think you would not simply have tuitions below $200 raised to $200, but you would probably have some raising all up and down the line, so I think our number is probably a little on the conservative side. It is always hard to know what people's reactions will be to new legislation, but we think as a minimum you have to assume they will come up to $200.

Mr. Carey. That is a fair assumption, but the same panel came to a conclusion which I would support. To counterbalance these tuition increases, which would mean the expulsion of the poor from the nonpublic schools, additional funds would have to be found in terms of contributions, donations and so forth so that the income increase would not fall so severely upon the parents of these children.

I think that we have to take into consideration that any support of this kind for nonpublic institutions require an increased effort on their part to make sure the poor are not driven out of these schools while other children could remain.

We would not want the bill to have that impact. That is why I join with you in the theme that the bill should be inclusive enough to permit the nonpublic school poor to remain in those schools and not take care of just those who can afford to be in the schools and take the tax credit.

Secretary Shultz. If you raise the $200 with a refundable credit scheme that would not exclude anybody. They would have that $200 automatically provided by the terms of the bill so they would not have that problem.

Mr. Carey. I don't want to spend too much time on this, but it is evident some families might get a $160 or $40 tax credit, depending upon their tax liability. In this case, we meant for it to be completely refundable.

Secretary Shultz. Might I comment on your first statement having to do with whether or not the bill as drafted does imply a refundable credit. Our legal analysis was that it does not. Yours is that it does. I agree we can undoubtedly get together on that point.

As a nonlawyer but listening to people argue about the constitutionality of these things, it seems a refundable credit imposes additional problems beyond a nonrefundable credit. So in our judgment, if there is to be a refundable credit, it ought to be so handled in the bill that the constitutionality of the whole is not endangered by that particular part.

Mr. Carey. I would agree and I am sure with the very competent staff here we have ample expertise to draw a severability provision in the bill. There is another large question as to whether you want to make congressional accounts severable and let the courts make the decisions.

As far as I am concerned as an author of this bill, we don't want to renew the attitude of hostility—I would use that word advisedly—that existed prior to 1965 in the educational community between those who were in charge of the conduct of public education and those who were in charge of the conduct of nonpublic education. It was a long hard fight, beginning in the days of Senator Taft in 1944, to try to bring Federal aid to all of the children in the schools. If I thought that by submitting this legislation I would renew that hostility, I would not be a party to it. I would not want to renew any sense of prejudice or jealousy that existed among parents who were fortunate enough to have their children in private schools and those who were too poor to avail themselves of that opportunity.

We don't want to break down economic or integration and cooperation which has been brought about by the Elementary and Secondary Education Act of 1965, which for the first time made Federal aid benefits available to all children in all schools. That is why this bill which we have before us attends to both the public schools and the nonpublic schools.

I would like to ask Secretary Richardson, is it not your assessment that it is politically and practically impossibe to do something for one segment of the educational community; namely, the nonpublic schools, unless you do something kindred for the public sector at the same time?

Secretary RICHARDSON. I think it is certainly desirable to approach both problems together.

Secretary SHULTZ. Might I insert an analytical point in this because I think it has a bearing. It has to do with the amount of Federal payments now going to public schools which don't go to nonpublic schools, since we are on the question of equity of treatment, so to speak.

Mr. CAREY. That is a very important point and I wish you would address it.

Secretary SHULTZ. Our estimate is that there are outlays on the order of about $75 per pupil to public school students. In addition, because of the deductibility of your local and State taxes, you thereby have an average contribution, so to speak, of about $65. So you have to add these two things together and that is where you start.

In other words, there is already a fairly sizable Federal subsidy to public schools both through the tax system and through direct outlays. I just wanted to get that point in.

Mr. CAREY. I think we can thoroughly agree upon that. It has been said many times one of the reasons for this type of legislation is that the nonpublic school parent is already paying a massive share to local property, sales, and other taxes to support the public schools, but gets no adjustment or no consideration of any kind for the cost of educating his children in the nonpublic schools. That is a case of equity which can be made here.

With regard to keeping both the principle—which says you must aid all the children at the same time—and practical political consideration—which says you must aid public schools at the same time you aid nonpublic schools—intact, what would be the cost of the revenue sharing bill you referred to over in the other committee?

I address this question to Secretary Richardson. What is the administration's cost of H.R. 7798; namely, educational revenue sharing?

Secretary RICHARDSON. It is about $3 billion. There is no specific price tag in the bill. This is an amount derived from adding up the proposed budget figures for all of the categorical programs that would be brought together in that legislation together with an additional amount designed to assure that no State receives less than it is now receiving through the combination of categorical programs.

The legislation could be funded with more or less than $3 billion as a matter of budgetary judgment on the part of the executive branch and the Congress. It is really a bill designed primarily to simplify Federal-State relations in the field of education than a bill which is conceived of as a funding vehicle.

Mr. CAREY. Is it not your understanding, then, that title I of this bill, which is essentially a disbursement of moneys to the States to enable them to meet the demands of the *Serrano* decision or the *Rodriguez* decision, is about the freest and most block grant-type of disbursement which you can make? So isn't title I of the bill consistent with the motion of revenue sharing to State educational agencies contained in H.R. 7796? Don't the two bills come together on that point?

Secretary RICHARDSON. I would only say they are complementary in the sense that the special revenue sharing legislation would undertake to provide a simpler, consolidated system for allocating funds for State and local school systems to help carry out functions that are of specific national concern—education of the handicapped and the disadvantaged and vocational education, for example.

Your legislation deals with the different problem of how to equalize per pupil expenditures among districts, recognizing the differences in local taxable resources. We think that problem should be addressed separately and, as my testimony makes clear, we now have underway a very intensive effort within the executive branch to think of possible ways of doing that.

Mr. CAREY. On that note could I urge the most expeditious consideration in the executive branch of the points that the President's Commission on Public School Finance made in its report of March of this year? I am sure there were preliminary releases and I am sure there was very close cooperation between that Commission and your office. Yet at this point, some 6 months after, we are told that some time before the end of the year we may have pertinent recommendations in what appears to me to be a very grave situation.

I think the two sectors of our schools, the public school system and the nonpublic schools, could be described as between collapse and chaos. You admit yourself, as do the numerous releases coming from the White House, that we must save the nonpublic school system from going out of existence. In some cases schools are closing at the rate of one a day. By the time we get around to the rescue attempt there may be nothing to rescue.

From all your statements, these schools are heading for collapse or are collapsing daily. They are faced with grave situations. Now we are told we must temporize until we get an expenditure ceiling and if that is enacted, we may be able to save these schools from collapse.

At the same time, in the public sector, the impact of these school and integration decisions, as well as the movement of children into the inner cities, brings about a situation of chaos there.

In testimony this morning we heard that school budgets are being killed on a very systematic basis by school boards which would not put up any more money because of the heavy impact of the local property tax. I think the situation warrants more than, shall I say, extended and leisurely deliberation. I think you should appear before us or some committee of this House with an interim plan to save the nonpublic school and to assist the public school during a time when it is undergoing, in many cases, the crisis of none of the teachers reporting for work due to failure to reach teacher agreements and failure to enact school budgets.

I think that this is the kind of situation which calls for more dynamic action and I would urge it.

Secretary RICHARDSON. We do have the whole subject under very intensive study, Mr. Carey.

But just to take your own approach to it, I would point out there are a lot of tough problems here. For example, should there not be some means of recognizing cost differentials within States? There are wide variances in teachers' salaries and in overall cost of living as between parts of States, urban, and rural areas. In addition, there are problems of education of children in cities, education of disadvantaged children particularly, which would not be met by an equalization approach alone. Should this particular burden of innercity schools be recognized in the allocation formula?

What about the education of the handicapped? Should there be property tax relief built in?

Mr. CAREY. In my previous committee assignment I took good care of that. There are dozens of programs for the handicapped. There are laws on the books which can be funded right now. We have attended to that problem to the fullest degree possible. We have really made progress in that area. That is not an area where we need more legislation. We are talking about areas where we need more legislation.

Secretary RICHARDSON. The problem is whether and to what extent Federal legislation dealing with the problem of equalization should or should not deal with variances in cost, including variances in cost that arise out of the differences in the cost of education that exist between large city schools and other schools.

The use of existing categorical legislation is an alternative which should be explained. The point remains, nevertheless, that we need to think through the question of how to design a Federal program that has the objective of equalization.

Mr. CAREY. You addressed the point that innercities may need more money than the equalization formula will provide. If you will work with us, we can overnight draft an amendment to the Urban Education Assistance Act, as suggested by the President's panel back in March. It would not take more than a few hours for our joint staffs to come up with a draft to direct some of the money into the inner city.

It will not take 8 or 9 months to develop something of that kind. I think we have a different understanding of the degree of this crisis. You think it will take several more months to formulate ideas. There won't be a Congres here several months from now. We are here now. We do have solutions before us.

Since we have a favorable philosophical approach, perhaps we could come up with legislation to take care of the public schools and the nonpublic schools at the same time. I will not even consider to be practical any notion you can fund this program by abating or repealing an existing program that is of some benefit to the public schools such as the impact area. I think we should stick in the area of feasibility. You endorse the tax credit approach which would not be covered by the expenditure ceiling which you so strongly recommend. That is on the side of reduced revenues not additional revenues, so you have to be careful in saying the revenue ceiling will take care of this and the President can pick some area to get the $700 million for the nonpublic schools. That would not be within the ceiling. This is a reduction of revenues.

Secretary SHULTZ. It is a reduction of full-employment revenues so you have to take it out one way or the other.

I would like to comment on your call for action. I think that one could, say, enact title II and modify it as we have discussed here. Enact title II. We have an agreement on that. Enact the spending ceiling.

I sense maybe not full agreement on it, but nobody speaks against it all that strongly. And put these two things together.

It seems to me if we wish to do one specific thing that would be helpful, we do not have to solve all the big problems of the world. And believe me, this problem of equalization is a tremendous problem. It is in the courts, it is conceptually difficult to think your way through it and there is a tremendous amount of money involved, at least as I have sensed it. But why do we have to slow up our ability to take care of one problem because of the fact that we really have not come to satisfactory terms with something that is large, difficult, complicated, being studied in the executive branch and the legislative branch, and the subject of current court action. It is another aspect of the problem, so let us do what we can do and do it now.

Mr. CAREY. Mr. Secretary, you may have cut the Gordian knot. If you say, do it now, I agree with you, provided this credit would not take effect until the taxpayer's return is filed by April 15 of next year.

If we get a commitment by then, whatever administration is in the White House will be coming forward with a total program to assist the public schools in equalization, urbanization, and all of the factors that apply to these schools. Once we get through this you will be able to attend to all of the other problems, if you are around.

Secretary SHULTZ. We have to win the election first.

The CHAIRMAN. Mr. Conable.

Mr. CONABLE. I agree that equalization is going to be with us for quite a long time and it is a large problem. I understand your reluctance on title I, Secretary Richardson.

You talk about the variables involved here in the historic development of the assessment process. You mention Hawaii and the District of Columbia get better than 90 percent of their money from the Federal level. Aren't there very wide ranges of practices, as many as there are States, with respect to equalization? Isn't this going to cause a very serious political problem in any formula you come up with for providing equalization? Isn't it very likely to have a major impact on the State programs for aid to education also?

Whatever we do is very likely to result in major State accommodations. Isn't that going to be necessary if we are to have a process here that will be politically acceptable in terms of voting the general tax money for the benefit in different degrees of State aid to local schools in the different States?

Secretary RICHARDSON. I think everything you touch on and suggest in that question, Mr. Conable, is absolutely true.

It might be useful to distinguish between a Federal role in the support of educational objectives that are important national concerns such as education of the disadvantaged or handicapped, or career education and these objections which are of a more local nature.

Second, the Federal role in assisting the process of equalization through a contribution of Federal funds for that purpose. Title I of the bill before you would have that second objective.

A third possible Federal role touched on by the President in his state of the Union message is assistance to the States for the relief of property taxes.

Legislation might combine all three of these purposes. It might embrace only the second two, equalization and property tax relief, or it could be limited only to the third.

Now to the extent that we assume the States are going to have to face up to the necessities of equalization as a result of court action or as the result of general momentum which has been simulated, in part, by the court cases, then it might be deemed appropriate for the Federal Government's role to be limited to property tax relief through a Federal tax source for that purpose.

This is the kind of question we have submitted to the Advisory Council on Intergovernmental Relations and needs to be considered in this context.

Mr. CONABLE. This committee is not deeply involved in the problems of education here legislatively in the Congress, so we may not have the overview that other Members of Congress would have of the education problem. I think that many of us feel that the Federal Government is going to have to make a quantum jump in its support of education in some way or other and that the existing educational aid formulas, ESEA and impacted aid, are very unsatisfactory programs and, therefore, tend to damp down the enthusiasm for the kind of Federal participation in education we probably must have in the future as a result of our running out of local tax resources. I wonder if you feel this equalization role is going to be perhaps the way in which we supplant these inadequate programs with bad formulas, and if you anticipate through this tax approach this committee is likely to wind up playing a major role in education.

I am interested and concerned about this because I don't know whether we have the expertise to do it.

Secretary RICHARDSON. I can only restate the point, Mr. Conable, that we do need to think through just what it is that we seek to accomplish. We could have a combination, for example, of a special revenue-sharing approach to education along the lines of our pending bill which, in effect, could simplify some 33 existing categorical grant-in-aid programs by consolidating them into a single piece of legislation with five major areas of educational support.

That legislation would have the function of transferring funds raised by general revenue to the States for educational purposes of national concern.

A second piece of legislation could deal with the problem of equalization and/or property tax relief as such. There does need to be considered the question of the extent to which the Federal funds should provide equalization support as distinguished from property tax relief. That is not an easy question at all because it means, in effect, that where you are concerned with equalization, you must decide—equalization at what level? The ratio in a given State today may be between expenditures of, say, $2,300 per pupil in a rich school district and, say, $500 or $600, in a poor school district with a corresponding difference in tax effort. The school system spending only $500 or $600 is perhaps taxing itself more heavily than the school district spending $2,300.

When you equalize, at what level should you equalize? Presumably it would be something more than the 50th percentile statewide. Of course, the closer to the 100th percentile, the $2,300, the more money it costs from revenue sources in order to equalize up. How much more?

Then there is a question of whether the local school system should be allowed to spend money raised on the local tax base over and above the amount required per pupil. This involves whether a school system should be prevented from spending any money raised by the local tax base, and if so, how much more should it be allowed to spend?

If it can be allowed to spend any amount indefinitely above the equalized amount, then to that extent inequalities are perpetuated. These are all the kinds of things we have considered to be pretty tough problems. Beyond all this is the Federal role.

Certainly if you are facing the question of property tax relief, that is, the substitution of some other tax, then this committee becomes clearly involved in what the substitute tax should be.

Mr. CONABLE. Mr. Secretary, I think your comments bear out the major problems that are facing us here and I quite agree that we are going to have to move with some care. I really have been upset about our inability apparently to reform ESEA and impacted aid.

I think they are quite inadequate vehicles for Federal aid to education. I hope the time will come when the Federal Government will be able to play a constructive role instead of what has been a rather imperfect role, I am afraid, in the overall educational system, and I commend you for your deliberateness at this point.

I really think we have to look at it pretty carefully.

Mr. GIBBONS. Quite some time has passed since I have been over in the Education and Labor Committee. I have been hearing a new slogan. What is career education? I thought all education was career development.

Secretary RICHARDSON. This is a concept developed by the Commissioner of Education, Dr. Sidney P. Marland, as a way of describing the assumption you just stated, namely, that education should be directed toward a career. In fact, as Dr. Marland has pointed out, much of what is called general education in our school systems today does not equip a child for any particular career nor, for that matter, for college entrance either.

The Commissioner's view which has met with considerable support around the country is that all children should be exposed to the world of work from an early stage of education so that they can begin to think about how they will fit into their communities and society after school.

Mr. GIBBONS. I am glad you have said they should be exposed to a world of work. I have been trying to get you to ask for sufficient money for the cooperative education program. All you have been willing to spend is a couple of thousand or a million at one time while I have been advocating much more.

Secretary RICHARDSON. Your point of view has been gaining converts. There is more awareness of the value of this kind of opportunity than ever before.

Mr. GIBBONS. Let's talk about the question before us. As I listened to your testimony I understand you support title II of H.R. 16141; is that correct?

Secretary SHULTZ. Basically, yes. We have suggested some modifications; yes.

Mr. GIBBONS. Under title II of H.R. 16141, what is the minimum amount of income a taxpayer could have, say, a taxpayer like me? I have three children in school. What is the minimum amount of income I could have and still get the full tax credit.

Secretary SHULTZ. Mr. Carey says it is drafted, and we would support it being drafted, so that if you had zero income, you would still get it because it is a refundable credit.

Mr. GIBBONS. Whether you ever paid any income tax or not?

Secretary SHULTZ. Right.

Mr. GIBBONS. I was stranded in the Atlanta Airport the other day. While trying to find a hamburger, I saw this big ad "Tax-free income," and you find these ads in the Wall Street Journal and you see them on billboards. Apparently I could have no taxable income and send in something and still get the $600 back.

Secretary SHULTZ. This bill provides for $200, not $600——

Mr. GIBBONS. I was using a family of three children. I would not have to pay any taxes and I could still get $200 or $600 for the three children?

Secretary SHULTZ. That is the implication of making this a refundable credit. If you pay the tuition, you deduct it from your income tax. If your income tax is not as much as the tuition, then it is, so to speak, refunded to you.

Mr. GIBBONS. I assume you all would not bring a bill here you thought was unconstitutional, but in arriving at your decision on this bill, did you ever consult with the Attorney General? Did you ever get a formal memorandum on the constitutionality of that?

Secretary SHULTZ. The constitutional question is what led me to suggest in my testimony that the refundable aspect of the bill be written in such a way that it is separable from the balance of the tax credit, so that if that were declared unconstitutional, it would not mean the whole thing was unconstitutional. Mr. Carey and I had some discussion on that.

Mr. GIBBONS. Assuming it was declared constitutional, what is the minimum amount of income I could have and still get a full refund on it? Isn't it about $12,000 a year?

Secretary SHULTZ. According to Mr. Hickman's calculations, if you have three children in school, chances are you would get up into the $10,000 range.

Mr. GIBBONS. What would you do for the people who had less than $10,000—just give them a partial credit?

Secretary SHULTZ. We are doing many things. One was to agree with the refundable idea in this bill, so that is the first approach. As you suggested, we are not suggesting something which is unconstitutional. We don't know if it is unconstitutional or not. There would be a test of that if this is passed.

Beyond that, there are many Federal expenditure programs that are heavily concentrated on the low-income student. So if you can't do anything about it on this side, you try to do it on that side. There again in terms of direct outlays going to students in private schools, you have great difficulty and there is now an inequity so to speak in Federal payments and tax subsidies between public schools and private schools. This would seek to correct that as best we can.

Mr. GIBBONS. I am trying to limit my questions because my time is running out, so pardon me for interrupting you.

Actually, if you had an income of less than $10,000 a year, this tax credit would do you progressively less good if you sent your child to private school?

Secretary SHULTZ. Assuming it is all constitutional, it would do you the same amount of good, at least in terms of absolute dollars no matter what your income is. If the refundable part were declared unconstitutional, then your statement would be right.

Mr. GIBBONS. On the ceiling on spending that apparently got into the conversation here, what would be your plan—to cut? You couldn't get under $250 billion this year.

Secretary SHULTZ. I gave one example of a place where there would be savings generated and I have not made any estimate of how much.

Mr. GIBBONS. I would assume you would cut all of the unbudgeted items first, the ones you failed to budget first?

Secretary SHULTZ. I will have to turn that question over to Mr. Weinberger, he is the cutter. But, I do think that you would get a saving on interest on the debt of a fairly substantial amount just by virtue of doing this and holding to it.

Mr. WEINBERGER. We have a nice division of labor. Mr. Shultz brings in the revenue and we are supposed to put it away.

Mr. GIBBONS. It amounts to an item veto.

Mr. WEINBERGER. No; it is not an item veto because the legislation that passed in many years before would be equally subject to an examination or reduction as legislation that has not yet passed.

Mr. GIBBONS. You would not be planning to cut revenue sharing?

Mr. WEINBERGER. We have not said we plan to cut it. We have to get it enacted first.

Mr. GIBBONS. You just lost one vote. You would not even cut revenue sharing even though there is $2.5 billion in the legislation for retroactive operating expenses.

Mr. WEINBERGER. Revenue sharing was urged a long time ago and several States wisely or unwisely have budgeted on the basis they are going to get revenue sharing. The President has recommended it, I think, for a little over 3 years and is strongly pushing it.

The problem about the reductions necessary to get within a spending ceiling is that it is not, I think, necessary or desirable at this time to try to indicate in detail the precise areas in which each reduction would be made. For one thing, we don't have any idea how much reduction might have to be made to get within. One of the best rules of avoiding reductions is if the Congress in its action on the remaining appropriations bills would insure we don't have to go beyond that. The amount is roughly $3 billion above the budget submitted by the President last January.

We would simply have an opportunity to get back to that ceiling by looking over the whole spectrum of governmental programs. That, I think, is the only way it can work. That is why we have asked that there not be any loopholes in it, that it be all-inclusive that that burden be put upon us.

I think it is instructive to note a previous time a spending ceiling was discussed some time ago, the executive branch spent most of the time trying to persuade the Congress not to do it, and we say that should not be the case. There should be no exceptions.

It should be equally applicable to the executive and the Congress, and it should be completely rigid. That is the only way we can accomplish what Secretary Shultz pointed out some time ago that we are going to get these outlays under control.

Mr. GIBBONS. I am always amazed you can bring in a budget that is $40 billion out of balance and say it is noninflationary, and if we try to add one/two-hundredth to the budget, you all scream and hollar it is inflationary.

Mr. WEINBERGER. In the first place, it was not nearly that much out of balance, and I think most of the members of this committee strongly argued that some sort of fiscal stimulation was necessary, and that stimulation is provided by a budget that does not exceed the full employment revenues and outlays but does exceed the actual revenues and outlays.

Mr. GIBBONS. I have no further questions, Mr. Chairman.

The CHAIRMAN. Mr. Brotzman.

Mr. BROTZMAN. Thank you, Mr. Chairman.

It seems this bill presents two basic problems: First of all, a need which I think you have testified to quite adequately. The other problem is that of constitutionality of the legislation. I don't think the record is too carefully made on this latter point.

It is my recollection that there has been a rather consistent line of cases construing the so-called establishment clause in which it seems that the bar or the ban has been on the expenditure of tax funds for so-called sectarian education.

My question really is this—and I would hope someone is going to testify on this point—what legal rationale causes you to believe the tax credit can be used to effect assistance to nonpublic schools?

Secretary SHULTZ. Not being a lawyer, I will comment just in general that we did have the view that the refundable portion had a greater question to it than the nonrefundable portion. And we advised that the two be treated separately, having in mind the point that you make. But Mr. Richardson being an attorney, I will pass to him.

Secretary RICHARDSON. I think the main basis for the belief that a credit would be constitutional is that the financial benefit goes directly to the family and not to the school. It treats all families who have children attending nonpublic schools equally whether or not the school is sectarian.

The problem with respect to the cash refund arises to the extent, although we think only very indirectly, that would involve the direct reimbursement of schools.

We know from the Supreme Court decision in the case of *Lemon* v. *Kurtzman* that the reimbursement of even nonsectarian or nonreligious instruction in a nonsectarian school would not be constitutional.

Mr. Weinberger may want to develop the question of whether or not there should be included in the bill some provision for a credit for tuition or fees of public schools.

Mr. WEINBERGER. We originally suggested in our letter, Mr. Brotzman, that that be done. We suggested that, first of all, there be consideration given to the benefits of the tax credits to be made available to families who pay no income tax, the point being made a moment ago by Congressman Gibbons.

Second, we also recommended that consideration be given for allowing all tuition and fees paid by parents to both public and nonpublic schools.

Mr. BROTZMAN. So you broaden the class to strengthen the constitutional argument.

Mr. Weinberger. That was the suggestion we sent in the letter to Chairman Mills on the earlier bills, many of the provisions having been incorporated in title II. The constitutional question could only be addressed by constitutional lawyers still in practice, but there are unquestionably somewhat comparable precedents and, as you know, deductions are permitted for the contributions to charities, even though charities may be totally and completely church-oriented, and those seem to be upheld without too much problem.

I don't want to present, in any case, the constitutional arguments on the bill because I have not been in practice for some 3 years now.

Mr. Brotzman. I think what you are saying is, as far as you know, there are no precedents that would bar this particular approach.

I will yield to my colleague from California.

Mr. Pettis. The gentleman just answered the question I had.

The Chairman. Are there any further questions?

Mr. Burke. I am trying to understand what the position of the administration is here. Do I understand you correctly that you are in favor of the tax credit, but you want to study further that part of the bill that applies to the public schools?

Secretary Shultz. That is essentially correct. We are not ready to go for title I at this point.

Mr. Burke. I have in mind something which happened in the city of Boston just over the weekend. A private school has been ordered closed down by the Department of Public Safety. There are 450 students in that school. If it is closed down, it means those 450 children will have to go to public schools at a cost of a half million dollars to taxpayers of Boston.

If the tax credit bill is enacted, would this prevent this situation from happening in the future, will they be able to keep these private schools open and reduce the rate of private school closings that are taking place all over the country and that is placing an intolerable burden on the property tax payers?

Secretary Shultz. We think it would help in that regard, certainly.

Mr. Burke. When you help the private schools, you help the property owner and the public schools, because it makes more money available for the public schools.

Secretary Shultz. That is correct.

The Chairman. Mrs. Griffiths.

Mrs. Griffiths. I hesitate to ask this question because I was not here at the beginning of today's hearing, it must have been raised, but can you explain to me how you are going to get rid of the property tax?

Secretary Richardson. Mrs. Griffiths, there would have to be a substitute tax source. If the *Rodriguez* case is upheld by the Supreme Court, that of course would mean all States, regardless of any Federal action, would have to find tax sources to substitute, if not fully, at least for a large part of the money they now raise on the local tax base. The question that faces the Federal Government is whether, apart from anything the States may do, there should be enacted provisions for raising money on the Federal tax base to be distributed among the States for replacement of local property tax dollars.

Now, there are obviously various ways in which this could be done. The administration has given some consideration to the possibility of a value-added tax, subject again to the refundable features that would assure that it was a progressive tax. You could certainly use the income tax.

In any event, insofar as this function was undertaken by the Federal Government, there would be a dollar-for-dollar substitution for local taxes, and the result would be simply to replace a regressive tax, inequitable in its result because property is unequally distributed, with a tax collected on a broader and fairer base.

Mrs. GRIFFITHS. Would this money be given to you only if you eliminated the property tax?

Secretary RICHARDSON. This is an important question. It depends upon whether the same legislative vehicle is conceived of as providing an equalization fund. If you set out with the objective of property tax relief and put this as a primary goal of legislation, then you would condition the provision of Federal funds on the actual proportionate reduction of the property tax.

Mrs. GRIFFITHS. The truth is, the plan sounds just wonderful. One group of taxpayers after another has seized on it for generations. But, they have never been given property tax relief. We have had this exact situation in Detroit and in Michigan for a long time. We voted for an income tax in the city of Detroit on the theory we would get property tax relief. The truth is that the property tax has doubled. We have not voted for any additional mileage. They have increased the valuation year after year, so that on the property Mr. Griffiths and I own in Detroit we are today paying double the amount we once paid, without any additional tax being levied.

Now, how can the Federal Government presume to say, "We are going to relieve you of property taxes," unless they preempt the field? The only way the Government could do it would be to say, "We will take over property taxes."

Secretary RICHARDSON. Not necessarily, and this is one of the approaches we have submitted to the Advisory Council on Governmental Relations for their comment and advice.

You could say that the Federal Government would provide a matching amount up to some cutoff for State expenditures for local education, provided, however, that the combined Federal-State fund was used in substitution for reliance on the local property tax. To that extent the local property tax could not be used for the support of education. That would leave the question I touched on earlier in a colloquy with Mr. Conable, whether or not there could be any expenditures over and above the combined Federal-State fund from local property tax sources. You could prohibit such expenditures. That would leave, then, of course, the opportunity for local governments to call on the property tax to buy more fire engines or for additional policemen.

Mrs. GRIFFITHS. Or police pensions.

Secretary RICHARDSON. You might end up with property tax relief, but you could condition the availability of Federal funds on the substitution of a combined Federal-State fund tax sources for the local property tax.

Mrs. GRIFFITHS. Would it not be fairer and better to say to the public, "We would like to use this tax to relieve property of the school tax, but we don't guarantee that your property tax is not going to be increased?"

Secretary RICHARDSON. That would be the honest thing to do, to put it that way.

Mrs. GRIFFITHS. I think you would have a better chance with it.

Secretary RICHARDSON. You have some other questions on this that need to be addressed, such as, would the new tax source be used in substitution only for residential property taxes or all local property taxes including commercial property? You would have the question, then, as to the differential between agriculture, residential and commercial property. How would each of these categories be treated? You have the question of how to treat renters and whether or not any special provision should be directed toward them.

These are just some of the things we have been concerned with. They are among the kinds of problems you have to face when you begin to think about whether or not there should be a Federal role in property tax relief.

The States will also have to consider these questions to the extent they have to carry out court decrees, such as the *Serrano* decision in California.

Mrs. GRIFFITHS. Secretary Romney helped rewrite the Michigan Constitution and there is a provision which says in any rural area, if you sell one or two acres, and no matter at what price you sell them, that becomes the price at which farmland is valued in the State for the purposes of taxation. Of course, it is really a cheap and inexpensive way to give that land to speculators and industry. That is all it is for. It has nothing to do with anything else. It is a dreadful thing in States with big cities, because it puts an impossible burden upon farmland.

All of these pieces of property have impossible burdens upon them.

Another thing that bothers me is how are you going to equalize these schools? I had a very fine teacher in math and science come to talk to me the other day. We are having problems within the school system in Michigan. One of the things she pointed out is that it is a fallacy to assume the suburban schools are better than the Detroit schools. She said that many science laboratories in the high schools in the city of Detroit are far superior to the science laboratories in a good many of the colleges of this Nation.

If you are going to start equalizing everything, where will you start? Are you going to make sure all of the suburban schools have all this equipment, do you leave it up to the schools, or do you just equalize money?

Secretary RICHARDSON. That is a very good question. What do we mean by "equalization"? This is a problem that has to be thought through in the context of the bill before you, because it deals only with the equalization of money.

H.R. 16141 would presumably equalize money, no matter whether the money was being spent for debt service, on pupils, on very high teachers' salaries—perhaps out of line with other districts in the State—or whether it was being spent on instruction.

Again, these are questions that really ought to be looked at in terms of deciding on what basis equalization is being achieved or should be carried out.

Mrs. GRIFFITHS. I must say that I have taught 1 day every year in the high schools in my district, whether public or parochial. I represent some very fine parochial high schools. The truth is, most of these schools are going to have to close unless they are given real help immediately.

I hope the $200 is enough. But frankly, I doubt it.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Vanik.

Mr. VANIK. Mr. Chairman, as I see the administration's position on this legislation, you have qualified your support for title II, providing we reduce some expenditures some place or provide some alternative increase in income: is that a correct statement?

Mr. WEINBERGER. That is a suggestion we made in our letter. We do endorse the principle of the bill.

Mr. VANIK. This endorsing in principle is something I have struggled with all my life. When you say "in principle," does that mean with or without any of these other conditions being met?

Mr. WEINBERGER. We said:

> Finally, if this legislation is enacted, a corresponding offset either by way of expenditure reduction or revenue increase would have to be found, so that the Treasury would not suffer the revenue loss that this proposal requires.

We also said in all three of our statements this morning we support the principle and recommended it to the Congress prior to the introduction of the first bill.

Mr. VANIK. In the beginning when the asset depreciation range was established by the administration, it was undertaken by Treasury itself. My question is, has the administration, and I address this question to the Secretary of Treasury, Mr. Shultz—has the administration considered all possibilities of increasing revenue by some kind of administrative action? Do you share any responsibility along with this committee to help raise the money and if so, what recent administrative actions can you point to which have increased revenues of the Government?

Secretary SHULTZ. Well, I think a principal point on the increasing revenues has to do with the administration of the Internal Revenue Service. I think the more effective you can be in seeing that the tax system is increased fairly, conscientiously and forcefully, the greater the tax yield you will get from the tax system and we have been working very hard administratively on that.

Of course, the Bureau of Customs collects much smaller amounts of money, but we have been working administratively there with great effort.

Now as far as the asset depreciation range is concerned, there, of course, one has the question: Do we see some impact from that change and the somewhat associated job development credit change which was made and in which this committee participated very crucially. Do we see any impact from that?

Well, it is always hard to say. It is always hard to connect cause and effect, and it really takes a long time before you can determine the impact. From all the surface indications the investment in new plant and equipment prior to the passage of that was much lower than what we now see in prospect and what is now coming on stream. So I think at least as a first approximation we see that was a good move, if you think good is measured according to whether or not jobs are produced by this, according to whether or not efficiency in the economy is produced by this, and things of that kind.

Mr. Vanik. What has been in the increase in corporate income as a result of the asset depreciation range? Can you detail that?

Secretary Shultz. I don't have that figure right before me, but it is certainly the case with the depressed level of profits we have had really going back to 1965 and coming on that we would expect to see corporate profits increase quite substantially and would be alarmed if they didn't.

Mr. Vanik. By one stroke of the pen almost $3 billion of Federal revenue was washed out by the asset depreciation range action.

Secretary Shultz. It was certainly more than a stroke of a pen. There was a lot of discussion here in this committee and in the Senate and it became part of the 1971 Tax Act. There was a lot of constructive thought and effort, it seemed to me, put into that act, and, on the whole, all of you who have worked on that have a right to feel reasonably good about the results of your efforts.

Mr. Vanik. I must say I was thoroughly displeased. I would argue the Congress had nothing to say about that. That came back as part of a conference bill where it was attached at the last minute to legalize something the administration has already done.

Putting that aside, I would like to have you insesrt in the record at this point, if possible, a list of those administrative actions by this administration that have increased revenues. You have great powers in Treasury where you have overall policy.

The IRS is the administrative arm for tax policy. You have the overall policy and oversight. I would like a listing of those administrative actions that have been taken to increase revenues to help this committee in its difficult work of raising the money it takes to support the Government.

I would like to have those listed by item and by amount of revenue if such a listing can be made.

Secretary Shultz. Some such listing is possible. How detailed and how categorized and so on it can be, I don't know. But we will certainly be glad to see what we can do about that. When it comes to Government revenues, of course we have a very complex situation. It is not only the Treasury that collects revenues, but you also get revenues from such things as the rights to drilling on offshore lands, for example. There we have a very complicated situation in which the environmental concerns and the concerns about energy and so forth are apparently in some conflict, and that is posing an issue.

So there are may more aspects to the governmental revenue subject than just how well the IRS does, although I think that is a critical and central aspect of our tax system.

(The information referred to follows:)

The administrative actions of the Administration which have had the greatest recent effect on the revenues were the steps taken in 1971 to restore the economy to greater prosperity. Increased prosperity translates directly into increased tax revenues.

Steps taken included the proposed amendments to the income tax regulations making depreciation reforms (later codified in the Code), the proposal for enactment of the Job Development Credit and repeal of the automobile excise tax, and the other wage-price and foreign trade and monetary aspects of the President's New Economic Program.

Together these actions have been successful in stimulating economic activity (with resulting revenue increases) in the following respects:

GENERAL ECONOMIC HEALTH

Real Economic Growth: Gross national product at constant prices rose 6.2 percent during the past year (1971–II to 1972–II). This contrasts with 2.0 percent in the previous year. The rate of growth in the second quarter of this year was as high as it has been in more than a decade.

Inflation (tenuous connection with tax steps): Consumer prices have risen at a 2.9 percent annual rate since August 1971. This compares with 6.1 percent during 1969, 5.5 percent during 1970, and 3.8 percent in the 8 months of 1971 prior to Phase I.

Employment: Total employment rose by 2.6 million between August 1971 and August 1972. The unemployment rate has come down to the 5½ percent range and is expected to decline further.

Real Earnings: Real spendable earnings in July 1972 (average weekly pay after deduction of social security and Federal income taxes and correction for changes in consumer prices) were 4.3 percent above a year earlier. This was the largest year-to-year increase in real spendable earnings since the series became available on a monthly basis in 1964.

AUTOMOBILES AND CAPITAL GOODS

Domestic Auto Sales: In the last three months (June-August), new domestic car sales have averaged 9.3 million units at a seasonally adjusted annual rate. This is nearly a 20 percent increase over a 7.8 million sales rate in the comparable three-month period a year earlier. Elimination of the excise tax and the vigorous economic expansion have been contributing factors.

Investment Survey: The latest Commerce-SEC survey calls for a 9.7 percent increase in plant and equipment spending, 1972 over 1971. This compares with an increase of less than 2 percent between 1970 and 1971.

Leading Indicators of Capital Spending: Contracts and orders for plant and equipment and new capital appropriations by manufacturers have both increased more than 25 percent over the past 12 months.

Capital Goods Orders: Total new orders for durable goods industries in the last three months are up 21 percent from a year earlier. New orders in the machinery category (excluding electrical) are up 20 percent. Machine tool orders in the May-July period of this year averaged 40 percent above a year earlier.

The long-run benefit to the economy of the ADR system and the job development credit is of major importance. Depreciation reform and the credit for new investment are long-run structural improvements designed to improve productivity and long-term economic growth. ADR and the investment credit provide a needed strong incentive to investment to convert innovations of research into actual technological progress, more production, and more jobs. Further, the taxation of productive capital goods in many industrialized nations abroad is significantly lower than in the United States. The investment credit and ADR depreciation rules have substantially improved our competitive position by reducing the relative capital costs for U.S. businessmen.

Mr. VANIK. Mr. Chairman, your predecessor, Mr. Secretary, last year told us that we should repeal the excise tax on motor vehicles, a revenue loser of another $3 billion. Now when we combine the Treasury loss of asset depreciation revenue and repeal of the motor vehicle excise tax we have $6 billion loss which would have handled almost several of these very important programs. We were told at that time that this would create a great many jobs, that for every 100,000 additional automobiles, there would be 25,000 jobs. We find today there are fewer people working in automobiles on a month-by-month basis compared with last year, so we have lost the $3 billion and we have lost about 20 percent of the jobs.

I don't suppose we can call your predecessor here to account for his statement, but that was made very, very clear to this committee that these tax losses would be a job-creating device, that the impact would be tremendous and that there would be increased sales with increased jobs and the whole economy would enjoy a tremendous stimulation of energy and productivity because of the actions——

Secretary Shultz. We believe that has taken place.

Mr. Vanik. What about the jobs?

Secretary Shultz. The jobs have increased in the past year by about 2.5 million—2.5 million.

Mr. Vanik. In the automobile industry, Mr. Secretary, I am talking about the effect of the $3 billion excise tax loss on jobs in the automobile industry. My figures indicate there has been a decrease in the automobile industry and the machine tool industry. That is the statement I have. What is the answer to that question?

Secretary Shultz. The answer to that question is that any industry as large and as pervasive as the automobile industry is in this country has an impact. When it really starts to expand, it has an impact on the whole economy. It would be nice if we could talk here of employment in the four major automobile companies as such and confine it to that. But I think the fact of the matter is that their suppliers, their dealers, the impact throughout the community and so forth, are part of a general movement that starts in the economy.

In terms of the overall result, I think what we see—and as I said earlier, it is hard to always pin these things down exactly—but we see an increase of about 2.5 million, which is gigantic from any standard.

Mr. Vanik. What is the fact today with automobile employment compared with comparable periods of last year?

Secretary Shultz. It depends on how you define it.

Mr. Vanik. I count jobs. I use the same definition Secretary Connally did. Am I correct that there are fewer people working in the automobile industry?

Secretary Shultz. I have not studied these figures exactly but it is my impression if you take a definition of "automobile employment" meaning the number of employees on the payrolls of the four companies, that you are correct. If you were to advance the proposition that that is the extent of the impact of the automobile industry on employment in this country, I would have to disagree.

I think it is so widespread that the surge that we have had in the automobile industry must be very helpful in the overall surge in the economy that we have seen in the last time.

Mrs. Griffiths. If the gentleman will yield to me, I think there are 40,000 fewer people working in the four companies' assembly plants now than there were last year. But, I am sure the Cleveland steelworkers and glassblowers are all at work.

Mr. Vanik. I have one other question, Mr. Chairman.

What do we mean now on the rate of joblessness with respect to full employment?

Secretary Shultz. We have a convention of a 4-percent unemployment rate. The main thing, of course, in calculating revenues is that you have to translate into the national income and personal income, corporate income, and so on, in order to get your revenue estimate associated with that general level of economy.

Mr. Vanik. A year has now passed since we were to achieve that level. How are you projecting or achieving that?

Secretary SHULTZ. There is reasonable expectation that when we get to the end of this calendar year, the unemployment rate will be in the neighborhood of 5 percent. Also we think the economy will be continuing its present strong expansion and so that we should see a continued downward movement in the unemployment rate. How long it will take to get down to the 4-percent level, I think, depends on many things, not only the general surge of the economy, but whether or not we successfully devise methods that will be helpful where unemployment is particularly acute, such as the employment of new, young entrants to the labor force.

For this reason, the administration has been strongly supporting a youth differential in the law and I am happy to say the House passed that amendment and it will be part and parcel of the answer to your question.

The CHAIRMAN. Mr. Waggonner will inquire.

Mr. WAGGONNER. Thank you, Mr. Chairman.

I want to say anything we do to consolidate the mass of categorical programs we have and provide more efficiency and economy in this administration will be worthwhile. We have duplication and the administrative cost is too high.

At the Federal and local levels we have many people whose salaries are being paid by categorical programs and whose jobs, in my opinion, could be consolidated.

I would like to know how the administration defines "nonpublic" in providing a tax credit to nonpublic schools. What constitutes nonpublic schools?

Secretary SHULTZ. Basically it has to do with the extent to which funds to be used to operate come from nonpublic sources.

Mr. HICKMAN. What we are talking about are the not-for-profit schools that do have at the moment a charitable deduction, which depends upon their being nondiscriminatory as far as admissions policy is concerned.

Mr. WAGGONNER. But at the moment you say they must have a charitable exemption?

Mr. HICKMAN. Yes.

Mr. WAGGONNER. Under present guidelines, whether present law speaks to it or not, what are the criteria for this charitable exemption?

Mr. HICKMAN. In general, to get the charitable exemption they must be devoted to some charitable purpose, which in this case is usually for education, and there must be a non-for-profit status in the sense that the income or the profit, the net returns from the operations, do not accrue to any particular individual, but reside in the activity itself.

Mr. WAGGONNER. You are saying the parents or the students would be eligible in such schools if it is a nonprofit educational operation and operated on a nondiscriminatory basis?

Mr. HICKMAN. That's right.

Mr. WAGGONNER. I want to get this point clear. Do you advocate both refundable and nonrefundable tax credits?

Secretary SHULTZ. Yes, we support the bill as understood in the committee print.

Mr. WAGGONNER. Do you feel that in supporting refundable credits that the net effect after a while will be to complicate the problem further and cause students who are presently enrolled in public schools to move to so-called private, nonprofit schools?

Secretary SHULTZ. I would not expect there would be any particular flow. You do make it a little less expensive to go to the nonpublic school by this device. To that extent you would perhaps stem the decline of the nonpublic school.

Mr. WAGGONNER. Do you advocate a ceiling on the income of the parent of a nonpublic school student who will be eligible for this credit?

Secretary SHULTZ. Yes, we think the credit should be phased out at the $18,000 income level. That is sort of the touchstone of that.

Mr. WAGGONNER. That brings us to the crux of the problem as I view it. Are you talking about the welfare program for needy persons or are you really talking about doing something for education? I don't see how you can really say you are really interested in providing for the needs of nonpublic education when you are going to determine the benefit on the basis of the parent's income.

Who are you trying to help? The low-income individual or nonpublic education?

Secretary SHULTZ. We are trying to help both, but we have the view that the parents with relatively high incomes who choose to send their children to nonpublic schools have the wherewithal to provide that help.

Mr. WAGGONNER. Then we are going to increase enrollment in nonpublic schools, taking them from public schools, because you are going to give an incentive to low-income people to take their youngsters out of public schools and to enroll them in nonpublic schools.

Secretary SHULTZ. I think all we are doing is shifting the present very large incentives away from nonpublic schools. The problem is nonpublic schools have been declining drastically in their enrollment—largely because of school closings, as I understand it. All of the incentives now are toward the public school except that many parents feel the nonpublic school has some special advantages and they forego the material incentives in order to send their children there now.

We are trying to rearrange slightly the material incentives, and this rearrangement is toward the nonpublic school.

Mr. WAGGONNER. Congressman Carey sets forth in his proposal, a fact or figure, whether or not it is a fundamental assignment, that we have something in excess of 5 million youngsters in nonpublic schools. When, if ever, have we had more youngsters in nonpublic schools?

Secretary SHULTZ. I don't have the number.

Mr. CAREY. If my colleague will yield, I think I can answer the question about the increase in enrollment as a result of Federal financing and the question of the present numbers. In 1965 the number of nonpublic schoolchildren exceeded 7 million. Today is less than 6 million. People have left the nonpublic school system in those numbers, setting aside the increase in population.

So I think the proof positive is there. In 1965 when we began for the first time to assist nonpublic schools through supplementary educational benefits, through loan of textbooks and so forth, the charge was made this would cause an exodus from the public schools. This has not been the result.

Neither a textbook nor remediation program nor any kind of incidental benefit will cause the children to leave the public schools to go to the nonpublic schools; $200 does not begin to cover the total cost of educating a child. If a nonpublic school were to accept more children because of the tax credit feature, they would not be able to accommodate these additional children.

There is nothing in this bill or, to my knowledge, anywhere else, to cover the cost of a capital structure to make additional facilities available if the parents did want to avail themselves of nonpublic school enrollment as an added feature because of this bill. In other words, the record of the exodus from the schools as well as the economics of the problem do not lend themselves to any net exodus from the public schools into nonpublic schools as a result of this legislation.

Secretary **Richardson**. May I just add that in the decade from 1960 to 1970 there was an increase in public school enrollment from about 36 million students to 46 million students, or an increase of 27 percent. During that same decade, there was a decrease in nonpublic school enrollment from 5,675,000 to 5,600,000, or a decrease from 13.6 percent of total enrollment to about 10.9 percent. This is, of course, the trend that has given rise to the concern expressed here today.

Mr. **Waggonner**. Mr. Secretary, you and I have had many friendly discussions and see many problems of education in the same light, so I am not an adversary. I am just attempting to get some answers here.

How would you respond to the thinking of the public school community that to provide this tax credit, refundable and nonrefundable to the parents of nonpublic school students is to take away support from public education and to entice people away from public education into private schools? They contend that public education is there for the youngsters of these families for whom we talk about providing a tax credit. That they don't use the public schools is their decision.

Secretary **Richardson**. I would say, Mr. Waggonner, that if we were in a situation where the effect of Federal action would be to entice people away from public schools and to private schools that I would view the desirability of Federal action in a very different light then than where the problem is the reverse. The current trend is one of progressive disappearance of nonpublic schools, particularly in the inner city where the parochial school system has been carrying a considerable percentage of the overall load. As far as we can reasonably and constitutionally do so, we should check that trend.

If we do not do so, then parents of all public school children will have to assume the additional burden of educating children now going to nonpublic schools through increased school taxes and at the same time we will have reduced the strength of the total school system by the elimination of one of its pluralistic elements.

Mr. **Waggonner**. There is a pilot program in operation, I believe in New Jersey funded by the Office of Economic Opportunity, which provides tax credits for the so-called disadvantaged children of low-income families in the ghettos in the inner cities. Has there been any constitutional challenge to that pilot program and what can we cite in the way of educational achievements as through this pilot program?

Secretary **Richardson**. I am not aware of a constitutional challenge. I will supply for the record an evaluation of it to date.

Mr. Waggonner. Would you do that please, Mr. Secretary?

(The information referred to follows:)

I believe, Mr. Waggonner, that the pilot project to which you are referring is the Office of Economic Opportunity experiment in income maintenance called the "New Jersey Graduated Work Incentive Program." This experiment did not deal with tax credits to disadvantaged children of low-income families, but rather was an attempt to focus on the question of the work response of male-headed families to a negative income tax type income maintenance program. This experiment, and three others like it sponsored by OEO and HEW, was designed to test programs that are consistent with the basic concepts of the President's proposed Family Assistance Plan. Preliminary results from the New Jersey experiment have provided support for the Family Assistance Plan method of welfare reform.

We have not tested any method of providing tax credits to disadvantaged children for educational expenses.

Mr. Waggoner. Thank you, Mr. Chairman.

The Chairman. Mr. Byrnes.

Mr. Byrnes. There is one thing I wish you would ponder. You advocate a refundable credit and I gather it is also recommended that the credit should apply to fees or charges of that nature if they are in public schools; is that correct?

Secretary Shultz. No, sir; we recommend that that be studied, but we did not make that recommendation.

Mr. Weinberger. We suggested this is a list of matters the committee might want to consider, Mr. Byrnes.

Mr. Byrnes. I am glad to hear that, because it seems to me with the ingenuity that is being exercised by Governors and mayors, it would be a relatively easy thing if that became the law, and particularly if it were refundable to simply have every public school child be assessed a $200 fee. It is not going to cost anybody anything, except for Uncle Sam and the U.S. taxpayers.

I think we have to be a little careful of that combination.

Mr. Weinberger. We would certainly not disagree with that.

Mr. Byrnes. We would not want to see the application of it to fees to public schools.

The Chairman. Mr. Corman will inquire.

Mr. Corman. Did I understand you to say a while ago that elementary and secondary schools, by direct appropriations, received about $75 per student?

Secretary Shultz. Yes.

Mr. Corman. Can you tell me why we would anticipate spending two times as much as we do in public schools?

Secretary Shultz. One was the amount of direct Federal payment here. We are talking only about the direct Federal payment and, second, there is the Federal subsidy to local public schools derived from the tax system. There is a tax deduction now for public school tuition since the property tax is the method by which the public schools are supported and you deduct it in your income tax.

We estimate that to average on the order of $65. This does not take any account of the direct and proper expenditures per pupil on education by State and local governments.

Mr. Corman. I would assume that would be another forum if they wanted to decide to support them or public schools, but the amount of money we are putting into education directly, the amount of loss of revenues from deduction for real property taxes, of course, falls quite unevenly because well over half the taxpayers use the standard deductions, so the benefits of the deduction of State taxes go to probably less than half the people in the upper tax brackets, but I think the average parent probably just gets that $75 direct outlay.

It would seem to me we ought to give some thought as to whether we want to go that much overboard with Federal dollars—maybe $200 per capita would be the rational amount, but we would have to do a lot of refiguring if we upped it by some two and a half times or so.

As I understand the cases now that involve real property taxes and you talked with Mrs. Griffiths about how we get property tax relief, none of those prohibited the use of statewide property taxes for financing education. The prohibition would be in differentials in local taxes. Isn't it correct that it would be no business of the Federal Government if the State decided to finance education at the State level with a statewide real property tax? That would not be our concern, would it?

Secretary Shultz. I agree with you.

Mr. Corman. We really do not anticipate trying to tell the States how they will raise revenues to pay for the public service they provide, whether they do it by sales taxes, real property taxes, or any other kind of taxes.

Secretary Shultz. I would put it this way. If there should be a decision that local property taxes are not an equitable and permissible basis for supporting public education, then there is a problem. How should that problem be solved? There is a large sum of money on the order of $20 billion, I guess, raised for public education around the country that way, and perhaps the best answer would be to let each State struggle with its problem and let it decide to do whatever is the best thing to do or what the right way would be to have the Federal Government involved in it somewhat to some degree. We are trying to study our way through that set of issues.

Mr. Corman. Is it your present thinking that the Federal Government will say we should bear a share of the cost of education, but that it would not be conditioned on how the State financed the balance of the cost as long as the State did it?

Secretary Shultz. It is certainly a possibility that you might put a condition in depending upon your analysis of how much of a problem the property tax is. The President's view is that the property tax, as it has risen in its amount, poses a special burden particularly on older people and it would be desirable to move away from that tax and to other forms of taxation.

Secretary Richardson. I might add there, too, Mr. Corman, that all the studies I have seen suggest that a disproportionately greater share of the property tax is borne as you go down the income scale. It is a highly regressive tax, considerably more than any other tax in common use.

If the Federal Government were to be involved in assistance to the States in overcoming reliance on the local property tax, it might well provide that Federal funds be conditioned upon the States choosing some form of tax other than the property tax.

Mr. Corman. Mr. Secretary, I agree with that completely. I hope that is the result. When we passed revenue sharing there was vigorous opposition to our using that measure to encourage the growth of State income taxes. That is why I was concerned about this.

Could I ask if you have any figures on the growth of nonpublic school areas where the schools are under desegregation orders by the courts?

Secretary RICHARDSON. We do not have those figures here, but we can make them available for the record.

(The information referred to follows:)

Figures for the growth of non-public school areas where the schools are under desegregation orders by the courts are not available; however, we do have available figures which show non-public school enrollment by State. The following table represents non-public school enrollment for school years 1961–62, 1965–66, 1968–69, and 1970–71, for the 12 States of the Southeast where most court-ordered desegregation has taken place.

NONPUBLIC SCHOOL ENROLLMENT BY SCHOOL YEAR

	1961 62	1965 66	1968 69	1970 71
Alabama	28, 342	30, 350	26, 302	54, 776
Arkansas	11, 767	13, 252	11, 094	12, 185
Florida	77, 859	94, 381	111, 500	124, 571
Georgia	24, 386	29, 147	28, 931	32, 678
Kentucky	86, 605	93, 428	77, 526	63, 023
Louisiana	124, 969	142, 822	131, 903	142, 745
Mississippi	16, 351	21, 521	20, 581	67, 327
North Carolina	16, 671	22, 603	20, 166	28, 679
South Carolina	13, 507	16, 424	21, 935	31, 011
Tennessee	30, 324	35, 167	34, 872	34, 737
Virginia	51, 156	62, 834	58, 570	65, 939
West Virginia	16, 737	14, 701	13, 777	11, 744
Total, Southeast	498, 574	576, 680	557, 157	669, 415

Source: National Center for Educational Statistics.

Mr. CORMAN. I understand that this tax credit would not be available to charitable institutions if there is discrimination.

Secretary SHULTZ. That is, in order to have the status of a charitable institution.

Mr. CORMAN. For instance, if a school gives preferential rights to Methodists, would that constitute discrimination which would prohibit the granting of the tax credit?

Secretary SHULTZ. Let me read to you from the Internal Revenue Service regulations on that. What is referred to is a racially nondiscriminatory policy as to students, which means: "The school admits students of any race to all the rights, privileges, programs, activities generally accorded or made available to the students at the school and the school does not discriminate on the basis or race in administering its scholarship programs, loan programs, and other school-administered programs."

Mr. CORMAN. The prohibition goes only to religion rather than sex.

Mr. WAGGONNER. Would that be in conflict with the civil rights law of 1964 to allow because of sex? Sex is one of the factors in the 1964 law. Religion is a factor.

Secretary RICHARDSON. I think that is a good question, Mr. Waggonner. The application of the 1964 law to admissions policy may go beyond the Internal Revenue regulations. The problem essentially is one of establishing discriminations. The school may, of course, be a school for boys or girls without being deemed discriminating. This is a question, of course, with respect to the application of the recent Education Act to colleges and universities. I'm not certain how we can get into the question of sex discrimination in admissions in private elementary and secondary schools.

Mr. WAGGONNER. We have in higher education.

Secretary RICHARDSON. This was dealt with by Executive order as it relates to employment and in the recently signed higher education bill.

Mr. CORMAN. If we draft this bill, what would be your recommendation about prohibiting religious discrimination—just as apparently we have racial discrimination—as a condition of the schools qualifying for the tax credit?

Secretary SHULTZ. Did you say "religious discrimination"? I would think we would want to allow the schools to discriminate on religious grounds. On the other hand, I think if you have a school that is set up by a particular religion, then there is an expectation that the students are likely to be from that religion. But if students from other religions wish to go there, that is all right. As a matter of fact, I think the enrollment in the parochial schools has a very heavy proportion of non-Catholics in it.

Mr. CORMAN. I was wondering whether we should address ourselves to that. Assuming we leave the law as it is now, we will prohibit race discrimination but not religious discrimination.

Secretary SHULTZ. This has to be thought through very carefully.

Mr. CORMAN. I would be very interested in your views, when you develop them, as to whether we assume we do get into that at all, because that is going to be a problem.

Mr. VANIK. Was there any estimate given as to the cost of administering this program?

Secretary SHULTZ. No, I don't think we did. It would be administered by the Internal Revenue Service, and the question of establishing tax-exempt status would not be any different than it is now.

Mr. VANIK. There obviously would not be any great expense involved in administering it?

Secretary SHULTZ. I would not think so.

Mr. CAREY. Mr. Chairman, I think it is important in considering how much money is apportioned by the Federal Government per pupil in the elementary and secondary schools that we be careful of the $75 figure. We should recognize we have no general aid programs which apply to all of the children in the elementary and secondary schools in the country.

We have the handicapped. Title I moneys are in the area of disadvantaged students. If we took the eligible students, I think we would find that the figure is considerably higher than $75. Is that correct, Mr. Secretary?

Secretary RICHARDSON. Yes, sir; that certainly is correct.

Mr. CAREY. As to whether we need help for the States in some form of equalization or in the form of the property taxes, I think it is helpful if we look at the project information furnished to us in the national education finance project in Gainesville, Fla., which was funded by HEW. In bold type they put: "Since the States are not able to alter their fiscal ability in any substantial amount, it would appear that only the Federal Government is in a position to eliminate the fiscal variations among the States insofar as education is concerned."

What we are saying here is that at some point in the future there isn't any question that we have to eliminate the variables, to eliminate the disequilibrium that exists in financing education among the States. As Mr. Conable said, there will be a considerably greater role for the States. That being the case, we know the per pupil commitment will increase. It would be dreadful, I feel, if the local school districts had to absorb in their enrollment another 10 percent of the children who are now receiving education, particularly because a basic sacrifice is being made to keep those children in schools at a large saving to the taxpayers in general.

It would appear that the public school sector is one we can hold onto through minimal assistance if we can keep it going. It is one economy we know we can depend on.

Secretary SHULTZ. I would take exception to your statement only in that it seems to me the objective of intrastate equalization does not necessarily imply any Federal role.

Secretary RICHARDSON. Mr. Carey's statement quoted from a reference which also referred to equalization among the States. If that were to be considered as a valid objective that needed to be undertaken, an issue not yet ruled on by any court, then presumably only a Federal tax source could deal with that problem.

Secretary SHULTZ. I used the word "intrastate."

Mr. CAREY. The financing applied to both intrastate and within the State equalization necessities with regard to the five States with the highest net income and expenditures about $2,000 per pupil and the five lowest States with expenditure of only $574; if the court applied the *Serrano* principles inside these States, it wouldn't be too long before the court looks at the State-to-State problem on the same basis, so I think we have to be prepared for a vaster, more effective way of financing education with Federal money.

I agree with my colleague in Louisiana that passing the interim legislation would be helpful—all the more reason why we should keep in existence those alternative methods that would have the effect of saving some money to public school districts and, namely, public schools. I want to thank the Secretaries and Mr. Weinberger for their very cogent and positive approach to this problem. They have certainly removed the issue from partisan considerations and, I might add, political considerations.

Mr. WAGGONNER. As related directly to this proposal, the problem is not that simple, intrastate, where the States distribute funds on a per pupil basis and distribute other funds on the basis of an equalization formula, many of these States distribute this money without regard for the number of students in nonpublic schools.

The public school educational agency still gets on an educable basis their pro rata funding for educable regardless of whether they are a public school or whether they are in nonpublic school, so this is not just a simple question.

Mr. CORMAN. This is the first time I have heard the administration advocate a negative income tax for a specific purpose. I understand a refundable credit is just that. Do you anticipate the use of a negative income tax to accomplish any other social or political objectives?

Secretary **Shultz.** No.

Mr. **Corman.** Is that because it places the highest priority of a child's need on private education, or is there some other purpose just as important?

Secretary **Shultz.** The reason is you start with this problem and you have an approach that seems to be usable, workable, able to be implemented fairly readily. Then I think when you look at the bulk of it, you see for reasons I think Mr. Carey developed very well in his questioning, that if you don't include some refundable method, you really have not quite picked up all the four corners of the problem.

Mr. **Corman.** You would agree with me that food and shoes are more important. It is not because of the child's need that we arrive at this result?

The **Chairman.** Are there any further questions? If not, we thank you again, those of you at the table, for being our witnesses this morning and being helpful to us.

Without objection, the committee will adourn until 10 o'clock in the morning when we will begin with our public witnesses.

(Whereupon, at 12:55 p.m., the committee adjourned, to reconvene at 10 a.m., Tuesday, August 15, 1972.)

TAX CREDITS FOR NONPUBLIC EDUCATION

TUESDAY, AUGUST 15, 1972

House of Representatives,
Committee on Ways and Means,
Washington, D.C.

The committee met at 10 a.m., pursuant to notice, in the committee room, Longworth House Office Building, Hon. Wilbur D. Mills (chairman of the committee) presiding.

The Chairman. The committee will please be in order.

Our first group of witnesses this morning is a panel led by Rabbi Morris L. Sherer of the Citizens Relief for Education by Income Tax. Will those on the panel please come to the desk. We will ask Rabbi Sherer to sit in the middle chair if he will. We are pleased to have you with us this morning, and if you will identify yourself for the record and those at the desk with you, we will be glad to recognize you.

STATEMENT OF RABBI MORRIS L. SHERER, PRESIDENT, CITIZENS RELIEF FOR EDUCATION BY INCOME TAX (CREDIT); ACCOMPANIED BY RICHARD THOMSEN, NATIONAL ASSOCIATION OF INDEPENDENT SCHOOLS; EDWARD R. D'ALESSIO, DIVISION OF ELEMENTARY AND SECONDARY EDUCATION, U.S. CATHOLIC CONFERENCE; IVAN ZYLSTRA, NATIONAL UNION OF CHRISTIAN SCHOOLS, EXECUTIVE DIRECTOR, CREDIT, AND MEMBER OF THE PRESIDENT'S PANEL ON NONPUBLIC EDUCATION; REV. FRANK H. BREDEWEG, C.S.B., NATIONAL CATHOLIC EDUCATIONAL ASSOCIATION; AND AL SENSKE, SECRETARY OF ELEMENTARY AND SECONDARY SCHOOLS, LUTHERAN CHURCH-MISSOURI SYNOD

Rabbi Sherer. Thank you, Mr. Chairman and members of the committee. My name is Morris L. Sherer. I represent the Agudath Israel of America, Commission on Legislation and Civil Action. But today I speak as president of CREDIT, Citizens Relief for Education by Income Tax, a nonpartisan organization representing the parents of this Nation's 5 million nonpublic school children who are studying in our schools.

We have accommodated the committee's request and have consolidated our statements. We would like permission to submit our full written statements for the record and any additional written material.

The Chairman. You have that permission. I want to publicly thank you for the very fine job you have done of coordinating and consolidating this testimony. It looks as though it will enable us to complete our hearings with about 3 additional days beyond this week in September. That, of course, means that we are in a better position to expedite consideration of the bill.

(The statements referred to follow:)

STATEMENT OF RABBI MORRIS L. SHERER, PRESIDENT, CITIZENS RELIEF FOR EDUCATION BY INCOME TAX (C.R.ED.I.T.)

Mr. Chairman and Members of the Committee: I wish to express to you the appreciation of the parents of this nation's five million nonpublic school students and our own gratitude for this early opportunity to address this committee on the subject of tax credits.

I speak today as the President of C.R.ED.I.T.—Citizens Relief for Education By Income Tax—a multi-faith coalition of nonpublic school leadership from every part of the country which has the cumulative effect of representing ninety-five percent of the nation's five million nonpublic school children. On our Board of Directors, some of whom were unable to be present here with us today, we have representatives of each of the following nonpublic school groups: the Jewish, Catholic, and Lutheran schools; Citizen's for Educational Freedom; the National Association of Independent Schools; the Episcopal and Christian schools; the National Catholic Education Association.

The very nature of the composition of this C.R.ED.I.T. coalition should serve as a dramatic disavowal of a popular fallacy that the problem of nonpublic education is basically a Catholic issue. As the composition of this coalition indicates, the nonpublic school problem is not a Catholic issue nor a Jewish issue nor a Lutheran issue. It is an American issue. At stake are basic principles striking at the very heart of the American way of life that we all cherish so dearly.

We are here today on behalf of millions of our parents fighting to sustain a basic freedom—freedom of choice education. This is the real issue. We believe that the right of a parent to choose the place and form of education for his child is a right guaranteed by the Constitution. Today, however, in the face of spiraling costs, ever-increasing tuitions, financial strangulation, this "freedom of choice" becomes a mere myth in the face of the cold realities of harsh financial pressures. The moment that we compel a parent to send his child to a public school, not by constitutional coercion but by pocketbook persuasion, for all practical intents and purposes, we have destroyed the possibility of open educational choice which has been a hallmark of our nation from the very earliest times.

Parental exercise of free choice in education is now at its own "Little Big Horn." It faces possible, some say "certain," extinction. Every day on the average of one and one half nonpublic schools close. Enrollments are dropping at the rate of six percent per year. With these school closings and enrollment losses, we believe the fabric of this great nation is just that much more rent.

We will not belabor what we believe to be the important contributions of the nation's nonpublic schools. Suffice it to say that we have trained good citizens; we have provided a spirit of healthy competition and alternative education; and we have made a significant contribution to the moral fabric of the United States. If this national dynamism that is nonpublic education is allowed to list seriously, or worse, sink, then we propose that this nation will have sustained a great and unnecessary loss.

As our parents find themselves no longer capable of carrying the entire cost of nonpublic education, we believe that the ramifications of this inability are felt in many and oftentimes very different ways.

While much of the focus has been placed in the past upon the problem of Catholic schools only, most probably because they are, indeed, the largest sector of nonpublic education, the recent report of the President's Panel on Nonpublic Education made certain to point out in its final report that "the problem is not exclusively theirs." "Ten years ago," the report continues, "only a quarter of the nation's independent schools were operating with deficits; by 1971 the figure had doubled, and about twenty-five private (non-sectarian, independent) schools have closed their doors since 1968." Newsweek magazine reported in January that "most (schools) have been caught in a vicious circle: rising costs dictate increased tuition which, in turn, serves to deflate enrollments."

We fully realize that there are a few regions of this country where the total elimination of the nonpublic schools of the area would not likely result in any major fiscal trauma for the political and educational sub-divisions effected. However, the declining nonpublic school enrollments become more significant when consideration is given to the areas of concentration. These areas consist of the eight industrialized and urbanized states of: New York, Pennsylvania, Illinois, California, Ohio, New Jersey, Michigan and Massachusetts. These states are already heavily encumbered by costly public services, with a serious financial crisis a distinct possibility.

In the state of New York, more than 800,000 children are enrolled in nonpublic elementary and secondary schools. The city of Chicago, Illinois, has 175,374 children enrolled in nonpublic schools. At an average cost per pupil in the Chicago Public School System of $862.00, nonpublic school parents are saving the taxpayers $151,172,000 per year by continuing to send their children to a school other than public. In Ohio, 315,000 students are in schools other than public. It has been estimated, for example, that the cost to the Cleveland taxpayer if the nonpublic schools were to in large measure cease to operate would be approximately six million dollars, an amount to be totally absorbed by increased taxes.

Mr. Chairman, and Members of the Committee, we can today, however, assure you that the problems of free exercise of choice by parents and their financial ability to make this choice in favor of alternative, frequently value-oriented education, is in a state of grave emergency.

Only some type of government intervention stands a chance of reversing this hellish cycle of enrollment losses, which ultimately result in school closings. This committee has presently before it legislation which stands a good chance, even an excellent chance, of reversing this unhealthy decline in nonpublic education.

We do not attempt to lay the problems of nonpublic education at the doorstep of finances only. We admit to certain other problems which also have a role to play in the decision on the part of parents to send their children to the public schools. But from every study and every survey which we have seen, we are convinced that the financial considerations, the problem of coming up with enough money to pay the children's tuitions, is the overriding cause of the inability of parents to continue to exercise the freedom of option.

The past five years has seen the average tuition in Catholic elementary schools nationwide rise from a range of $35–$85 to a range of $100–$250. In Catholic high schools, the average tuition range has escalated from a range of $100–$250 in 1969–70 to a range of $350–$600 in 1971–72. The average day school tuition in private, non-sectarian day schools has risen from $1,200 in 1967–68 to $1,700 in 1971–72. In Jewish schools, the average tuition has grown from a range of $200 to $1,000 in 1961 to a range of $400–$1,800 in 1971 depending on the area and the availability of scholarships.

As an example of the cause-effect relationship between increasing tuitions and decreasing enrollments, in Ohio, during the two years of state reimbursement for teacher salaries, the yearly enrollment decline was a mere 2.5 percent. As a result of the 1971 Supreme Court ruling in the Pennsylvania and Rhode Island cases invalidating such forms of assistance to institutions, it was necessary for the nonpublic schools of the state to increase tuitions a minimum of $100 per student. Last year the enrollment loss was 14.5 percent. One state, Minnesota, has had tax credit legislation in effect for more than a year. The enrollment loss being sustained in that state is below the national average.

I hope, Mr. Chairman, that the case for the immediacy and depth of the problem has been made. Let me now speak to our hopes and the hopes of millions of our parents in this regard. Education is the concern of every person and of all government agencies which service the general public. In the instance of nonpublic school parents, restrictive state laws and the nature of the nonpublic educational system within the constitutional framework mandate that the response by government must be at the federal level.

It is of national concern that all families, regardless of their particular town, city, or state, have a realistic choice of schools for their children. This fundamental right of parents to exercise this freedom of choice is generally acknowledged and has been often upheld by the courts. Likewise, it is axiomatic in our country that citizens are guaranteed freedom to practice their religion. Understandably, many people and some courts are only today confronting the relationship of religion to formal education. We have no doubt that the rights of each arena will be properly interpreted by the processes of law. But we must state that "education" does not necessarily mean "public education" and that "support" does not mean "establishment."

We appear here before this Committee in support of the various and many proposals which would provide to the parents of children in nonpublic schools a tax credit for a portion of the tuition which they pay.

We believe these proposals to meet all the criteria which has been established by the courts for adjudicating their ultimate constitutionality.

We believe that in the ratios and proportions of the legislation under consideration, such tax credits would sustain and, indeed, give life to the right of parents to choose the form of education they wish for their children.

Our organization has attempted to inform and educate the parents of children in nonpublic schools of the advantages of the proposed tax credit legislation. In so doing, we have found in most of our parents a renewed hope for the ultimate financial viability of their freedom of choice. Although the overwhelming majority of federal court decisions in matters relating to nonpublic education, from *Pierce vs. Society of Sisters* in 1925 to the *Allen* case in 1968 and including the *Yoder* (Wisconsin Amish) case this year have been favorable, the string of judicial setbacks of the last twelve months has left our parents confused, frustrated, and even alarmed.

I have attempted to be honest and forthright in my remarks this morning to the committee. In this spirit, let me say that while we recognize tax credits appear at this time to be the most viable avenue of assistance available to our parents, we recognize some of the problems inherent therein.

We recognize the difficulties in working within the framework of the tax laws. Yet the courts have left our parents little hope for relief in any other manner. In certain instances the courts themselves have suggested the tax credit approach.

We recognize that all of the various proposals currently before this committee would be of little benefit to those who are too poor to pay taxes. This very important group of people constitute four per cent of our nonpublic school parents. They have been and they will continue to be the beneficiaries of educational opportunities regardless of their ability to pay.

We feel that the arguments for tax credits are strong. They meet the stated constitutional criteria, of having a stated secular purpose; they would do nothing to advance or inhibit the cause of any one particular religion; and, they would not result in excessive entanglement between the church and state. The relationship resulting would be between the individual parent-taxpayer and the government as taxing unit. Certain classes of people do already receive tax credit benefits. We merely ask the members of this committee to extend the range of benefits to nonpublic school parents.

In conclusion, then, Mr. Chairman, Citizens' Relief for Education by Income Tax seeks fair and equitable treatment under the law for all citizens. Our parents pay a double tax. They willingly and uncompromisingly support the public education system within their community. For years they have equally willingly supported their alternate choice—the nonpublic school to which they sent their children. Today there is no less of a will for the spirit is willing, but the cash is weak. In the name of five million nonpublic school children, we urge this committee to give serious and favorable consideration to a system of tax credits for nonpublic school parents.

STATEMENT OF REV. FRANK H. BREDEWEG, C.S.B., NATIONAL CATHOLIC EDUCATIONAL ASSOCIATION

GENTLEMEN: We are grateful for this opportunity to address the Ways and Means Committee regarding federal aid to nonpublic elementary and secondary education. The National Catholic Educational Association is the professional educational association for Catholic schools, reflecting on the elementary and secondary level more than 10,000 schools and over four million pupils. Also reflected are more than 3,000 chief administrators such as school superintendents or board of education members, and more than 158,000 full-time teachers. Clearly, federal aid to education, in this instance federal tax credits, is a matter of the utmost importance to the constituents we serve.

We are well aware of the similar interest of other private schools, both sectarian and non-sectarian, with whom we share the basic belief that nonpublic schools are an integral and essential aspect of American education. We cannot speak for them, but we do wish to join with them in their concern for recognition and support of the nonpublic school sector. As for Catholic schools, which educate over 80% of the total nonpublic school children, we can reflect the attitudes of the parents and principals, the teachers and pupils, the school superintendents and board of education members, and the many others with whom we are in constant contact.

PRINCIPLES AND CONVICTIONS

While it would seem unnecessary here to discuss elaborately all of the ideological issues involved, it does seem essential to set down a few of the basic principles and convictions which in our opinion justify the attitudes of nonpublic school advocates. Those who have given so much for nonpublic education believe that the parent has the right to choose the manner in which his child is educated, and that one of the realistic options available should be private schools. This fundamental right of parents to educate their children in nonpublic schools seems to be guaranteed by our Constitution and upheld by our courts. In order to exercise this right today, parents need and are entitled to a measure of economic help, especially in view of the tax dollars they have long provided for public school use.

As to the relationship of education and religion, since about 95% of these pupils are in church-related schools, nonpublic school parents and educators see an educational process which not only serves the general welfare by providing a quality secular education, but also serves greater personal and social causes by integrating religious values into the enlightenment of young minds. Only those parents and children who choose this arena are in it. It is hardly a case of "establishing" or imposing a particular religious belief upon citizens who do not want it. Indeed, it is a greater danger that citizens stand to be prohibited from a "free exercise" of their religious beliefs insofar as they relate to the nation's educative processes. Public education was a minority factor at best when the Constitution was written, and it is at least reasonable to adduce that public and nonpublic educational approaches should be today supported equally in every respect.

In regard to purely professional and academic considerations, we find very few who do not agree that educational diversity and even competition are desirable. In terms of the quality and progress of American education, it seems to behoove no one to allow the development of one monolithic system. Nevertheless, unless a realistic alternative is available, neither parent nor pupil have a valid option.

We will not belabor these points. However, it seems essential to us that they be recognized not only as admissible but as fundamental principles of our society. We would presume that they are. It is not enough to endorse them, however, since the circumstances surrounding today's nonpublic schools call for immediate practical consequences.

THE CATHOLIC SCHOOL SITUATION

As with most issues, there is no single and solitary influence affecting Catholic schools today. Often it seems that only the detrimental factors have been discussed and researched. Inflation has increased costs. Increasing numbers of lay teachers are needed at higher salaries than the decreasing numbers of religious personnel. Fewer parents can afford Catholic schools and fewer parents feel it spiritually or educationally necessary. These are real forces flowing, but they are not the only realities.

The predominent reality is that many parents continue to struggle to afford increasing tuitions so that their children, over four million in 1971–72, can continue to attend these schools. Enrollments have decreased, 22% over the past four years, but the annual rate of decline indicates a begrudging inability to meet the burdens imposed, rather than panic or dissatisfaction. It would not be difficult to document, if it served any purpose, numerous instances throughout the country where parents have made remarkable efforts to keep their schools open, often after being told to close by various advisors. The annual rate of decline is accelerating, however, from 5.0% in 1968–69 to 7.8% in 1971–72, and the situation is indeed critical.

The matter of Catholic school closing as further complicating public school problems has also been discussed frequently. Surely the one million fewer students in Catholic schools since 1967–68 have necessitated adjustment and investment by the public sector. Another dimension seldom stressed, however, is the often disastrous effect which the disappearance of a school can have upon the community. Relationships and activities established over many years are suddenly dissolved. Besides the social and cultural loss, economic factors such as employment and real estate are often affected. In short, life-patterns are disrupted.

Unfortunately, these disruptions sometimes take place in urban areas which today can ill afford them. It is a fact that Catholic inner city schools have not closed at a rate faster than the urban, suburban, or rural schools, and remain very much involved with the educational, social, and economic aspects of large urban areas. Of the almost 11,000 Catholic elementary and secondary schools, about 13% are located in inner city areas and about 35% are located in the critically changing metropolitan area between the inner city and the city limits. About 52% of Catholic school enrollment is contained within the city limits of cities with more than 50,000 people. In regard to minority groups, black and Spanish-speaking pupils constituted 40% of the enrollment in Catholic inner city schools in 1970–71. Furthermore, 35% of the black students in inner city schools were non-Catholic.

These statements are made knowing that some criticize these schools for not contributing sufficiently to the solution of today's social problems. After centuries of service, this is an odd charge, but we will not debate it now. What must be understood is that the Catholic school system functions almost independently at the parish and school level. The Catholic Church is nowhere near as monolithic as most people believe. Whether a school can exist, and what it can do, depends mainly upon the number of Catholics in a particular area who are willing to support it with their own vitality and resources. Naturally, children of parents who support the school are given preference to others who do not. In spite of this, however, there are an increasing number of non-Catholics, many of them black, who are attending Catholic schools. Nor should it be forgotten that many Catholics are members of minority groups, both today and in decades past, and continue to be served by a system with a built-in economic equalization plan. In short, Catholic schools are very much involved in the problems which large cities face and their stability could be a valuable asset.

TAX CREDIT LEGISLATION

This brings us to the question of federal income tax credits and their potential effect upon the more than four million pupils in Catholic schools. Since the introduction of many tax credit bills to the Ways and Means Committee over the past few months, nonpublic school parents throughout the country have clearly reflected new hope in the financial viability of their schools. Frankly, after the many disappointing court decisions of the past few years, many were beginning to wonder how many additional years their own school could survive.

It is well known that federal and state courts have issued either final or temporary decisions which have declared unconstitutional such forms of aid as direct aid to schools, direct aid to teachers, and direct parental grants. The only signs encouraging to nonpublic school parents have been that most types of auxiliary services were upheld and that the state district court in Minnesota upheld their state income tax credit legislation. Despite the fact that auxiliary services and materials are indeed of great assistance, income tax credits appear to be the most likely form of aid sufficiently substantial to determine whether or not nonpublic school parents and children may continue to exercise their educational option. Voucher plan experiments have made no real headway, and dual enrollment arrangements often place an additional burden on the public sector while reducing considerably the school operations of the Catholic school.

Consequently, federal income tax credit legislation, which returns to the parent a portion of the educational tax burden he presently provides for public education, and which enables him to pay the increasing private school tuition costs, appears to be the only solution capable of immediate, significant aid to nonpublic schools. If it does not come, the indications are that enrollments will continue to decline begrudgingly, schools will be forced to close, land and buildings will lay vacant or inefficient, many wholesome and desirable community relationships established over many years will disappear, and the public sector will be faced with an added educational burden. And the tragic irony would be that nonpublic schools wanted to be a partner all along and were willing to supply the major support for their effort.

On the other hand, there is no doubt that if tax credit legislation is passed providing a significant revenue component, such assistance would stabilize the Catholic school situation for the immediate years ahead as well as enable the evolution of a new financial structure for the future. It is not carrying the major share of the financial burden which has become too much for parents. It is carrying the total share. Tuitions will continue to increase far beyond tax credits allowed. Nevertheless, the effect of the immediate relief and continued federal participation would make possible the development of a new shared-finances package involving primarily the parent, but also other parishoners, religious personnel, some federal funds, some state funds, and hopefully other members of the local community.

To be more specific in regard to the effect of tax credits, it must be understood that the 10,000 Catholic schools fall into three basic financial patterns. Elementary schools are parish schools, funded by parish subsidies (60%), tuition and fees (32%), and miscellaneous other income (8%). Secondary schools are sponsored by the parish, by the diocese, and by individual religious communities. Parish and diocesan high schools are funded by tuition and fees (61%), parish or diocesan subsidies (27%), and miscellaneous other income (12%). Private religious community high schools are funded by tuition and fees (80%), and all other income (20%). These percentages are national averages for 1970–71. Except for high schools sponsored by religious communities, it is clear that any major transition would be between subsidies and tuition charges. It is putting it mildly to say that a financial transition is taking place.

The combination of higher costs, fewer religious, lower contributions to the parish, the parish responsibility to service the increasing number of Catholic children in public schools, these and other factors are bringing about higher tuition charges and a lower share of revenue from parish and diocesan subsidies.

In regard to costs in terms of national averages, the 1970–71 budgets for elementary schools called for a 17.5% increase over 1969–70 expenditures. Current figures indicate not only that this 1970–71 increase did take place, but that a 30% increase was scheduled for 1971–72. High school tuition charges, which in 1970–71 averaged $243 per pupil in diocesan or parish high schools and $436 per pupil in private high schools, have continued increasing in recent years, with parish and diocesan school tuitions jumping 22% yearly and the more costly private schools increasing their charges about 12–14% yearly. Elementary schools have traditionally charged very low tuitions, preferring to balance out with parish funds, but this is changing drastically despite the often painful reactions of many parishoners. In 1970–71, about 71% of the elementary schools charged tuitions of less than $100, but during 1971–72 about 56% were charging from $100–$300. This trend must continue and accelerate on the elementary level, since parish reserves are exhausted and the present annual amount cannot be increased. Tuition charges, and state or federal aid, are the only realistic sources of assistance available.

CONCLUSION

It is important to note that parents and the local community do not ask to be relieved of the major part of the financial burden. They ask only that enough help be given to enable them to maintain their schools. Federal income tax credits would extend this aid on a national level, equalizing the opportunity to attend nonpublic schools for all parents throughout the country, something which state aid cannot do.

It is also within the bounds of reasonable speculation to project that Catholic school will change in many respects other than financial. For example, the national percentage of lay teachers on the combined elementary and secondary school staffs has gone from 40% in 1967–68 to 54% in 1971–72. Some schools already have 100% lay teachers. Many "ecumenical" schools have appeared, wherein members of various religious faiths attend the same school. Several schools have experimented with or implemented academic variations and innovations. Assuming that most nonpublic schools survive, a questionable assumption unless new factors intervene, it is impossible at this time to conceive of the nonpublic school of the future and its relationship to the public sector. It is clearly the American experience, however, that such evolutions should play out their role.

We sincerely complement those legislators and administrators who have instilled new hope into the hearts of nonpublic school parents and pupils. We urge that federal income tax credit legislation be expedited with all possible haste. Many citizens over many decades have given a great deal of their time, energy, and resources for nonpublic schools, a cause no less needed today, perhaps never needed as badly.

GENERAL INFORMATION—U.S. CATHOLIC ELEMENTARY AND SECONDARY SCHOOLS

	1967 68	1968 69	1969 70	1970 71	1971 72
Elementary and secondary:					
Schools	12,677	12,305	11,772	11,352	10,829
Percent decline		2.6	4.3	3.6	4.6
Enrollment	5,199,000	4,941,000	4,658,000	4,357,000	4,027,000
Percent decline		5	5.7	6.2	7.8
Full-time teachers	158,500	160,400	163,100	166,500	158,000
Religious	95,200	91,000	86,200	80,600	72,400
Lay	63,300	69,400	76,900	85,900	85,600
Percent lay	40	43	47	52	54
Elementary only:					
Schools	10,350	10,113	9,695	9,366	8,978
Percent decline		2.3	4.1	3.4	4.1
Enrollment	4,106,000	3,860,000	3,607,000	3,359,000	3,073,000
Percent decline		6	6.5	6.9	8.5
Full-time teachers	110,900	111,100	111,300	112,400	105,700
Religious	65,500	62,000	57,500	52,700	46,800
Lay	45,400	49,100	53,800	59,700	58,900
Percent lay	41	45	49	53	56
Pupil teacher ratio	33:1	31:1	29:1	30:1	
Secondary only:					
Schools	2,277	2,192	2,077	1,986	1,851
Percent decline		3.7	5.2	4.4	6.8
Enrollment	1,093,000	1,081,000	1,051,000	1,008,000	954,000
Percent decline		1.2	2.8	4.1	5.4
Full-time teachers	47,600	49,300	51,800	54,100	52,300
Religious	29,700	29,000	28,700	27,900	25,600
Lay	17,900	20,300	23,100	26,200	26,700
Percent lay	38	42	45	48	51
Pupil teacher ratio	20:1	19:1	18:1	20:1	

STATEMENT OF AL H. SENSKE, SECRETARY OF ELEMENTARY AND SECONDARY SCHOOLS, LUTHERAN CHURCH—MISSOURI SYNOD

Mr. Chairman and Members of the Committee, I appreciate the opportunity to serve as spokesman for the schools of The Lutheran Church—Missouri Synod in behalf of Tax Credits. Because your Committee is well informed on the issues and is working under severe handicaps of time, I shall provide basic information and state our concerns briefly.

SCHOOLS OF THE LUTHERAN CHURCH—MISSOURI SYNOD

Congregations of The Lutheran Church—Missouri Synod maintained 1,176 elementary schools with an enrollment of 146,352 during the 1971–1972 school year; 27 secondary schools with 12,543 enrolled. Elementary teacher-pupil ratio, 22.3 to 1; secondary teacher-pupil ratio, 18.2 to 1.[1]

The elementary schools of The Lutheran Church—Missouri Synod declined from their peak of 1,374 schools with an enrollment of 161,347 in 1965 to 1,176 schools with an enrollment of 146,352 in 1971. This is a decline of 14.4 percent in the number of schools and 9.3 percent in enrollment during a six-year period. The closing of small rural schools and of financially hard-pressed urban, especially inner-city, schools are the major factors in the decline. Financial pressures on church-related schools are often greatest in the inner city where they are needed the most.

Lutheran secondary schools are steady in enrollment.

The great majority of Lutheran elementary schools are maintained by single Lutheran congregations, though increasingly a number of neighboring congregations combine their resources to maintain schools. Lutheran high schools are maintained almost exclusively in larger cities, where congregations maintain one or more such schools cooperatively. On the elementary level, the bulk of the financial support is derived from the contributions of church members, while Lutheran high schools derive somewhat less than half of their support from contributions, the rest from student tuition.

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[1] Congregations of other Lutheran bodies operate 331 elementary schools with 37,430 enrolled; 10 secondary schools with 3,097 enrolled

POSITION ON PUBLIC AID TO NONPUBLIC SCHOOLS

The Lutheran Church—Missouri Synod (nearly 2 million adult members in the United States in 1971) favors public aid to church-related schools. At its 1965 convention, before passage of the Elementary and Secondary Education Act, the Synod stated that "federal aid offered to all children attending public, private, and parochial schools would undergird for parents the 'free exercise of religion' and make possible parental choice in the education of their children." The convention resolved "that federal aid for children attending nonpublic schools, as authorized by the Congress and defined by the courts, be deemed acceptable so long as it does not interfere with the distinctive purposes for which such schools are established" (Proceedings, 1965, pp. 153–154).

In 1969, the Synod encouraged its responsible education officials to concern themselves with the promotion of acceptable legislation, and at the same time expressed its concern for the needs of all schools, public and nonpublic, particularly also its concern for educationally deprived students (Proceedings, 1969, p. 133).

LUTHERAN SCHOOL CONCEPT OF ITS FUNCTION

From the public service viewpoint, Lutheran schools as well as the public schools in their communities, provide the required general education. They are concerned about their communities and, as far as their resources permit, open their doors to members of the community. In 1971, more than 32,000 of the 146,000 enrolled in the elementary grades of Missouri Synod schools were from non-Lutheran homes, while 11,500 (7.8%) of the total enrollment came from minority groups.

Lutheran schools are part of the American education scene with, however, a distinctive commitment and orientation which they consider vital to education. Through their religious orientation these schools seek to provide motivation for service and usefulness which comes from commitment to a power greater than self. They believe that they perform a public service and that this service deserves to be recognized in the allotment of federal funds to make their continued operation possible.

WHAT LUTHERAN SCHOOLS ARE ASKING

Lutheran schools are not asking for a full government funding of their educational costs, but for sufficient aid to enable them to exercise their educational option. Their supporters realize that willing support for church-related schools must be maintained whether they receive government aid or not. This is necessary both to keep the schools at a high level of excellence and to keep their constituency aware of educational needs and of church responsibility for Christian education.

In 1971, the schools of The Lutheran Church—Missouri Synod reported average per pupil operating costs of $380 on the elementary level and $669 on the secondary level. However, these figures, especially on the elementary level, do not represent the total cost. In reporting on his recent study of American nonpublic schools, Otto F. Kraushaar states: "Many church schools . . . receive substantial contributed teaching and other services upon which they do not even attempt to place a dollar value, or they do not count the cost of the use and maintenance of the school's facilities, expenses which are often defrayed by the congregation or parish. . . . For these and other reasons, published figures on the per pupil cost of educating young people in church schools—usually reported as being much lower than the cost of comparable grade levels in the public schools within the same community—are often quite misleading and should not be taken at their face value." [2]

The point is that patrons of nonpublic schools sacrifice heavily to provide their children with an education for which the United States Constitution grants the right. Because of financial stress, many supporters of these schools find the exercise of their educational rights inordinately difficult, and many find it impossible. The right to choose one's education is obviously hollow for those who cannot exercise it.

In behalf of Lutheran schools we ask alleviation of the extreme stress through aid to parents which is constitutionally acceptable. We believe that this is desirable and necessary for two important reasons, among others:

1. To enable parents the freedom of choice in the education of their children;

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[2] Kraushaar, Otto F., *American Nonpublic Schools: Patterns of Diversity.* Baltimore: The Johns Hopkins University Press, 1972, p. 203.

2. To make possible the full exercise of their religion for all citizens, including the opportunity to teach their children the moral and religious concepts which they consider necessary.

TAX CREDITS

Federal and state efforts to provide financial assistance to parents who choose nonpublic education for their children in elementary and secondary schools have taken many forms, some of which the courts have declared unconstitutional. From both the viewpoint of fairness and of likely constitutionality, Tax Credit seems to offer the most promising solution to a long-felt and increasingly difficult problem. We consider Tax Credit a way of recognizing the rights of parents who utilize nonpublic schools for their children's education, as well as a fair and constitutional means of providing significant financial aid for them, without lessening their own responsibility for providing their children with an education in which they believe.

STATEMENT OF DR. EDWARD F. SPIERS, DIRECTOR, OFFICE OF EDUCATIONAL PLANNING, CATHOLIC UNIVERSITY OF AMERICA, AND ASSOCIATE, OFFICE FOR EDUCATIONAL RESEARCH, UNIVERSITY OF NOTRE DAME

In support of federal income tax credits for tuition paid to nonpublic elementary and secondary schools in behalf of dependents.

STATEMENT

Income tax credits are necessary to insure these parents, particularly the low and middle-income families of which the majority of the 5.3 million children are members, the exercise of their constitutional rights, confirmed in the 1925 *Pierce* decision, because they can no longer pay the rapidly rising tuition charges.

DISCUSSION

Traditionally, church-related schools (Jewish, Catholic, Protestant) which comprise 95 percent of these approximately 15,000 schools, have sought to charge either no tuition to patrons, or as little as possible.

During the past few (5–10) years, it has become necessary for most of these schools to change from this policy of no-or low-user charge to a more realistic tuition, one closer to actual costs of operation because:

(1) *There has been a radical change in the teaching personnel.*—Until recently most of these schools have been heavily subsidized by teachers who received only subsistence allowances; today, the majority of these positions are filled by teachers who receive salaries comparable to those of the public system. For example, in schools sponsored by Catholics in 1950, 90 percent of the teaching staff were members of religious communities who received a subsistence allowance of $50 per month. Today they form only 40 percent of the teaching staff and receive $250–300 per month allowance. Lay teachers now comprise 56 percent of the staff, with the proportion increasing yearly.

(2) *Other increased costs of operation.*—These increases are comparable to those in public education and the general economic life of the nation.

(3) *Reduction in the pupil-teacher ratio occasioned by state certification requirements.*—This reduction is made necessary by the state's unsubstantiated assumption that better quality education is thereby achieved.

CONCLUSION

In view of these reasons and other conditions, nonpublic elementary and secondary schools today, must of necessity, require partrons to share more realistically in the actual costs of operation. In the least expensive of these schools (Catholic), elementary per pupil costs average approximately $300, and secondary costs $600. In the more expensive nonpublic schools, costs equal or exceed the state average per pupil costs of $900 (state costs range from $500–2200 per pupil). *Each year more and more parents find themselves priced out of their constitutional right to select a school.*

RECOMMENDATION

Federal tax credits to parents for tuition paid to nonpublic elementary and secondary schools will preserve, for most of these parents, the opportunity to select educational values for their children which the Constitution guarantees.

A way must also be found to aid those parents in direct need who pay no tax. This could be in the way of negative tax credits or special legislation providing scholarship grants to such children.

Constitutionality of tax credits legislation is above question. It is no different than tax credits currently allowed for the *common good*. This was one of the methods commended by the President's Commission on School Finance, and specifically advocated by the President's Panel on Nonpublic Education.

The fact that parents of nonpublic school children are in need of assistance, and that it is wiser to allow them $200–300 credit rather than to have these children enter the state $900 per pupil school, may be an impelling but it is NOT the constitutional reason for aid. The constitutional reason for aid to these parents is to preserve their right to freedom of choice in education. Otherwise this freedom, guaranteed by the Constitution and affirmed by the Supreme Court in 1925, becomes a function of one's wealth, a clearly discriminatory and unconstitutional act.

Rabbi SHERER. I am accompanied this morning by Mr. Richard Thomsen, National Association of Independent Schools; Dr. Edward R. D'Alessio, Division of Elementary and Secondary Education, U.S. Catholic Conference; Mr. Ivan Zylstra, National Union of Christian Schools, executive director, CREDIT, and member of the President's Panel on Nonpublic Education; Rev. Frank H. Bredeweg, C.S.B., National Catholic Educational Association; and Mr. Al Senske, Secretary of Elementary and Secondary Schools, Lutheran Church-Missouri Synod.

The CHAIRMAN. We appreciate having all of you, and you are recognized.

Rabbi SHERER. The very nature of the composition of this CREDIT coalition should serve as a dramatic disavowal of a popular fallacy that the problem of nonpublic education is basically a Catholic issue. As the composition of this coalition indicates, the nonpublic school problem is not a Catholic issue nor a Jewish issue nor a Lutheran issue. It is an American issue. At stake are basic principles striking at the very heart of the American way of life that we all cherish so dearly.

We are here today on behalf of millions of parents fighting to sustain a basic freedom—freedom of choice in education. This is the real issue. We believe that the right of a parent to choose the place and form of education for his child is a right guaranteed by the Constitution.

Today, however, in the face of spiraling costs, ever increasing tuitions, financial strangulation, this "freedom of choice" becomes a mere myth in the face of the cold realities of harsh financial pressures. The moment that we compel a parent to send his child to a public school, not by constitutional coercion but by "pocketbook persuasion", for all practical intents and purposes, we have destroyed the possibility of open educational choice which has been a hallmark of our Nation from the very earliest times.

What are the facts? Every day, on the average, one and a half nonpublic schools close. In some of the nonpublic educational groups, enrollments are dropping at the rate of 6 percent per year.

In 1972, it really should not be necessary for us to make a case for the contribution of the nonpublic schools to the professions, arts, science, and industry or to the moral fabric of America.

Also, it should really not be necessary for me to hammer away at the point that the nonpublic schools really have been helping the public schools by offering healthy competition and an alternative education. In our country of free enterprise, without competition any system would ultimately stagnate and be lost.

While most of the focus has been placed in recent years upon the problem of the Catholic schools, probably because they are the largest sector of nonpublic education, the recent report of the President's Panel on Nonpublic Education points out very clearly that this problem is not exclusively a Catholic school problem.

I quote this report which says that, "10 years ago, only a quarter of the Nation's independent schools were operating with deficits. By 1971, the figure had doubled, and about 25 private independent schools have closed their doors since 1968."

If we would focus now on the geographic areas of concentration of the nonpublic schools, you will then have a clearer picture of the meaning and the impact of the declining nonpublic school enrollment. These areas consist of the eight industrialized and urbanized States of New York, Pennsylvania, Illinois, California, Ohio, New Jersey, Michigan, and Massachusetts. These States are already heavily encumbered by the cost of public services with their own serious financial crisis.

Let me give you one example. The city of Chicago, Ill., has over 175,000 children enrolled in nonpublic schools. At an average cost per pupil in the Chicago public school system of $862, nonpublic school parents in Chicago are saving the taxpayers $151 million a year by continuing to send their children to a school other than the public schools.

Actually, at the heart of this entire issue, Mr. Chairman and members of the committee, is the problem of exercise of free choice by parents, as I already mentioned, to send their child to the type of school with the value orientation in which they are most interested. Only some type of Government intervention stands a chance of reversing this cycle of enrollment losses which ultimately results in the closing of schools.

The House Ways and Means Committee has before it now legislation which has a good chance of reversing this unhealthy decline in nonpublic education and of putting a stop to the loss of freedom of education which I would daresay, millions of Americans suffer from today.

The overriding cause of the inability of parents to continue the exercise of the freedom of option in education is the lack of money to pay tuition. We recognize there are other factors, but the heart of their inability to send their children to a public school and if they ultimately withdraw them from the public school is money.

Let me give you briefly some statistics. The past 5 years has seen the average tuition in Catholic elementary schools throughout the Nation rise from a range of $35 to $85 to a range of $100 to $250. Catholic high schools, for example, the average tuition range has skyrocketed from $100 to $250 in 1969 to a range of $350 to $600 in 1971.

In the private nonsectarian schools, the average tuition has risen from $1,200 in 1967 to $1,700 in 1971. In Jewish schools, the average tuition has grown from a range of $200 to $1,000 in 1961 to a range of $400 to $1,800 in 1971, depending on the area and the availability of scholarships.

The cause and effect between increasing tuitions and decreasing enrollments can easily be proven. In those States where there has been some form of government assistance to parents, there has been an imperceptible decline. As soon as that aid is stopped, the decline has skyrocketed.

Let me, for a few moments, Mr. Chairman and members of the committee, speak to you about the hopes of millions of our parents in this regard. Education is really the concern of every person, of every parent. In the instance of nonpublic school parents, restrictive State laws and the nature of the nonpublic educational system within the constitutional framework mandates that the only meaningful response to help alleviate the situation that I speak about this morning has to come from the Federal level. The fundamental right of parents to exercise this freedom of choice is generally acknowledged and has often been upheld by the courts.

We appear here before this committee in support of the various proposals which would provide parents of children in nonpublic schools a tax credit for a portion of the tuition which they pay. We believe these proposals meet all the criteria which has been established by the courts regarding their ultimate constitutionality. We believe that in the ratios and proportions of the legislation under consideration, such tax credits would give life to the right of parents to choose the form of education they wish for their children, a right which is the God-given right of every American citizen.

Our organization, CREDIT, has attempted to inform and educate the parents of children in nonpublic schools of the advantages of the proposed tax credit concept. In so doing, we have found that most of our parents feel a new sense of hope for the ultimate financial viability of their freedom of choice.

Let me speak to you very openly and candidly. The string of judicial setbacks of the last 12 months has left our parents confused, frustrated, and even alarmed. When they have been informed about the activities of our group and of the proposals before this committee, they have found new hope that there will be a future for educational freedom of choice in this country.

Of course, we recognize the difficulties of working within the framework of the tax laws. Yet the courts have left our parents little hope for relief in any other manner. In fact, in certain instances the courts themselves have suggested the tax credit approach.

We feel that the arguments for tax credits are indeed very strong. They meet the constitutional criteria of having a stated secular purpose; they would do nothing to advance or inhibit the cause of any particular religion; and they would definitely not result in excessive entanglement between church and state. The relationship resulting from tax credit legislation would be between the individual parent taxpayer and the Government as a taxing unit.

Certain classes of people already do receive tax credit benefits, such as for retirement income, foreign income taxes, work incentive programs, and so on. We merely ask the members of this committee to extend the range of benefits to nonpublic school parents.

In closing, Mr. Chairman and members of the committee, in the name of 5 million nonpublic schoolchildren and in the name of millions of other parents who are being deprived of their right to send their children to a school of their choice, we urge this committee to give serious consideration to a system of tax credits for nonpublic school parents.

Mr. Chairman, if I may, I should like to call upon some of the members of our panel for brief supplementary remarks.

The CHAIRMAN. You may do so.

Rabbi SHERER. Mr. Thomsen of the National Association of Independent Schools.

STATEMENT OF RICHARD THOMSEN

Mr. THOMSEN. I am Richard Thomsen, and due in part to the consolidation of testimony that has been referred to, I am a victim of what might be described as a mild identity crisis which I will share with you. First, I am a standin for Mr. Carey Potter, who is the the president of the National Association of Independent Schools and who, in a private capacity, is the vice chairman of CREDIT, the statement which Rabbi Sherer has just made.

I might say that the committee's highly welcome but somewhat sudden invitation to testify caught Mr. Potter, of all places, in Iceland, and since Iceland has been in the news, let me note his interest there was salmon rather than chess. Putting it another way, I would say fish instead of Fischer. He sends his regrets, and I am standing in for him.

Second, I am the Washington representative of the National Association of Independent Schools, a nonprofit, tax-exempt organization of about 750 schools, and I am also, on a temporary basis, the executive secretary of the Council for American Private Education, which comprises 10 nonprofit, tax-exempt organizations embracing the 5 million pupils to whom Rabbi Sherer referred in his testimony. At any rate, as you can see, I am a well-consolidated witness.

The National Association of Independent Schools and the Council for American Private Education, known as CAPE, do endorse the efforts of the committee to develop legislation which will help parents to exercise more freedom of choice in education. We do believe that tax credits represent the most promising means of achieving this, and we believe further that such legislation will be in the public interest not only by preserving some freedom of choice and diversity in education, but also by maintaining the voluntary outpouring of human energy and wealth into education.

I might note that the U.S. Office of Education figures indicate that about $5 billion a year goes into the private elementary and secondary education sector.

With that, Mr. Chairman, I will thank you and pass the baton back.

The CHAIRMAN. Thank you, sir.

(The following statement was received for the record:)

STATEMENT OF THE COUNCIL FOR AMERICAN PRIVATE EDUCATION

A STATEMENT ON PROPOSED LEGISLATION TO PROVIDE TAX CREDITS FOR PATRONS OF PRIVATE NONPROFIT ELEMENTARY AND SECONDARY SCHOOLS

To the Committee on Ways and Means:

The Council for American Private Education (CAPE) is a private nonprofit corporation comprising the nine organizations listed at the end of this letter plus the American Lutheran Church, which became a member on July 1, 1972.

Membership in CAPE is open to organizations which represent, serve, or operate private elementary and secondary schools on a national basis; subscribe to a policy of admitting students without regard to race, color, or national origin; are operated exclusively for educational purposes; and qualify for exemption from federal and state income taxes. The current membership comprises about 12,000 institutions, 5,000,000 students, and 250,000 teachers.

CAPE's basic purpose is to assist its constituents and the schools they represent in their efforts to serve more effectively the free society from which they derive their independence. Among the specific objectives are: the facilitation of communication and cooperation between various groups of private schools and between these schools and their public counterparts, various agencies of federal, state, and local government, and other national educational organizations; the encouragement of a vigorous diversity in education; and the enhancement of opportunities for more families to have a realistic choice among schools for their children; and the fostering of a closer sharing by private schools in the nation's educational tasks.

A major concern of those who work on behalf of private schools is the very present danger that rising costs in education, due to inflation and other factors, will result in a situation where only the wealthy will have any choice in the selection of schools. If more and more parents are forced to depend entirely on public schools for the education of their children, the country's nonpublic schools will inevitably decline in number and in vitality.

This would be especially regrettable at a time when educational alternatives are being sought to remedy some of our more pressing social problems, because the schools in question are by reason of their size and administrative structure well adapted for innovation and experimentation.

We believe that the situation is a matter for public concern and that some form of federal aid is justified for the following reasons: (1) that nonpublic schools provide secular education for about 10% of the nation's young, thereby relieving the public of the cost of educating these children; (2) that parents of nonpublic school pupils pay their full share of the taxes needed to support public schools and at the same time pour about 5 billion dollars annually (U.S. Office of Education estimate) into the economy to operate nonpublic schools; and (3) that if this funding is discontinued or substantially reduced, the public will not only lose the economic benefit of these voluntary contributions, but will also have to pay higher taxes to educate those children who are no longer in nonpublic schools.

We believe further that the legislation under consideration will enable more persons to surmount the economic barriers to a wider choice of schools for their children and will help to maintain a healthy balance between the public and nonpublic sectors of education. The members of CAPE therefore endorse the efforts of the Committee on Ways and Means to accomplish these objectives through the development of tax credit legislation.

Respectfully submitted.

RICHARD P. THOMSEN,
Executive Secretary.

Members: Board of Parish Education, Lutheran Church—Missouri Synod; Friends Council on Education; National Association of Christian Schools; National Association of Episcopal Schools; National Asseiation of Independent Schools; National Catholic Educational Association; National Society for Hebrew Day Schools; National Union of Christian Schools; U.S. Catholic Conference.

Rabbi SHERER. Dr. D'Alessio of the U.S. Catholic Conference.

Mr. D'ALESSIO. Mr. Chairman, the U.S. Catholic Conference does not have a formally prepared statement. They would like your permission to submit a statement at a later date.

The CHAIRMAN. You have that permission.

(See oral testimony of the U.S. Catholic Conference given on September 7, appearing at p. 579.)

Rabbi SHERER. Mr. Zylstra, National Union of Christian Schools and executive director, CREDIT.

STATEMENT OF IVAN ZYLSTRA

Mr. ZYLSTRA. Mr. Chairman and members of the committee, I am here representing not only CREDIT, but also the National Union of Christian Schools, which is a parentally controlled group of schools headquartered in Grand Rapids, Mich. I, too, would like to request the opportunity for our organization to submit a written statement concerning tax credit legislation.

The CHAIRMAN. You have that permission.

Mr. ZYLSTRA. Thank you.

(The statement referred to follows:)

STATEMENT OF JOHN A. VANDER ARK., DIRECTOR, NATIONAL UNION OF CHRISTIAN SCHOOLS

Mr. Chairman and Members of the Ways and Means Committee, I am John A. Vander Ark, Director of the National Union of Christian Schools, with headquarters in Grand Rapids, Michigan. My organization is a federation of 226 nonpublic, parental elementary and secondary schools located in 26 states, having a pupil population of more than 51,000.

These schools are not-for-profit, private, religiously-oriented but not parochial, institutions. They exist to offer the kind of education the sponsoring parents desire for their children—an integration of the principles of Christian faith with curricula. They conform to all State and Federal regulations pertaining to educational institutions, including the measures of the Civil Rights Code.

These schools are financed in the major part by tuition payments of parents with children currently enrolled. The steadily rising cost of operating these schools is placing a hardship on the majority of such parents, to the point where enrollment will decrease perceptibly.

We feel that the provision of H.R. 16141, Title II, and similar proposals submitted by Congressmen Byrnes and Ford (H.R. 13495) and Congressmen Burke and Mills (H.R. 13020) are absolutely essential for the relief of tuition-paying parents and the ultimate continuation of nonpublic schools.

We sincerely urge your Committee to give serious consideration to the legislation proposed to give these parents a tax credit benefit for tuition payments for the following reasons:

1. The parents are in dire need of such relief. The average tuition cost is about $500 for each elementary pupil and about $600 for each secondary student. And note, too, that these same parents willingly pay their fair share of taxes or the support of public schools.

The Internal Revenue Code, although providing magnanimously for taxpayers who make charitable contributions to these schools, does not provide a deduction for tuition payments.

2. Federal assistance for parents who elect to provide private education for their children is good public policy.

First, the United States by long tradition and heritage is a nation which can not only brook but also encourage more than one educational system. Diversity in all areas, including education, is the genius of Americanism. We are incontestably a pluralistic society and rich in heritage on that account.

Secondly, the tax credit proposals give parents a realistic and defensible freedom of choice in education. Anything less than this kind of assistance is mere lip-service to the pluralistic reality of our societal and governmental structures.

Thirdly, the proposals are an attestation to the proposition that private education does indeed perform a public service while adhering to the cardinal principal articulated by the U.S. Supreme Court: ". . . the custody, care, and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder" (Prince vs. Massachusetts, 64 S. Ct. 438).

Citizenship education and preparation for life generally in the Christian value system in contemporary society is fulfillment of a public purpose.

3. Tax credit as a mode for public assistance is a fully defensible approach. It offers a simple and widely available means of strengthening education while avoiding the controversial social and political question about direct Federal aid to private and State educational institutions. It definitely encourages an increase in direct, consumer investment in education and minimizes the "handling"

costs and the controls which would necessarily accompany the subsidizations of education by government and private agencies. And, finally, the proposals provide a significant relief for parents.

Private education is a must in our democracy, and tax credit legislation is the most viable method of demonstrating the partnership role of public and private advocates of education in our democracy.

Rabbi **Sherer**. Reverend Bredeweg, National Catholic Association.

STATEMENT OF REV. FRANK H. BREDEWEG

Reverend **Bredeweg**. The National Catholic Educational Association has completed a prepared statement and submitted it. I would like to take a few moments to highlight a few points.

We do wish to join the entire school sector in recognizing and supporting the opportunity to state certain principles and convictions. Primarily, we believe that parents have the right to choose the manner in which their child is educated and one of the realistic options available should be private schools.

As to the relationship of education and religion since about 95 percent of these pupils are in church-related schools, nonpublic school parents and educators see an educational process, which not only serves the welfare by providing a quality secular education but also serves personal causes by integrating religious values into the educational process.

In terms of the quality and progress of American education, it seems to behoove no one to develop one monolithic educational system. In regard to the Catholic school situation today there is no single, solitary influence affecting Catholic schools today. Often it seems only the detrimental factors seem to be researched and discussed. It is true that inflation has increased costs and that increasing numbers of lay teachers are needed at higher salaries than the decreasing number of religious personnel. It is true fewer parents can afford Catholic schools and it may appear that fewer feel it spiritually necessary. Those are not the only realities. I would say the predominant reality is that many parents continue to struggle to pay increasing tuitions so that their children—over 4 million last year—can continue to attend these schools.

Enrollments have decreased 22 percent over the past 4 years, but the annual rate of decline indicates a begrudging inability to meet the burdens imposed rather than panic or dissatisfaction. It would not be difficult to document, if it served any purpose, numerous instances throughout the country where parents have made remarkable efforts to continue the operations of their schools.

The annual rate of decline is accelerating, however, from 5 percent in 1968–69 to 7.8 percent in 1971–72, so the problem is indeed critical. The matter of Catholic school closing, as probably complicating the public school problem, has been discussed frequently. Another dimension which has not been stressed very much is the disastrous effect the disappearance of a school can have on a community as a whole.

In short, life patterns are disrupted. Unfortunately sometimes these disruptions take place in urban areas that can ill afford them. Catholic innercity schools have not closed faster than suburban or suburban rural schools. They remain very much involved with the educational and social aspects of any large urban area.

Of the almost 11,000 Catholic and elementary schools, about 13 percent are located in the innercity areas and about 35 percent are located in the critically changing area between the city and city limits. About 52 percent of Catholic school enrollment is contained within cities of more than 50,000 people.

In regard to minority groups, black and Spanish-speaking pupils constituted 40 percent of innercity enrollment in 1970–71; 75 percent of the black students in Catholic schools are non-Catholic.

In regard to tax credit legislation, since the introduction of many tax credit bills, nonpublic school parents throughout the country have clearly reflected a new hope in the financial viability of their schools. There is no doubt that if tax credit legislation is passed, providing significant relief to the parent, this assistance would stabilize the Catholic school situation for the immediate years ahead and perhaps, more importantly, it might enable the evolution of a new financial structure for the future. It is not carrying the major share of the burden which has become too much for parents. It has become the total share.

Tuitions will continue to increase far beyond any tax credit allowed, but the effect of the immediate relief by some Federal participation would make possible not only the development of a new shared-financial package involving primarily the parents, but also the other parishioners and hopefully other members of the local community who have parish subsidies, some Federal funds, and some State funds.

With that I will wait for the question period.

Rabbi SHERER. The last member of our panel is Mr. Senske of the Lutheran Church, the Missouri synod.

The CHAIRMAN. You are recognized, Mr. Senske.

STATEMENT OF AL SENSKE

Mr. SENSKE. Mr. Chairman and members of the committee, we have submitted written testimony. I would appreciate the opportunity to review just several points with you.

I represent the largest Protestant school system in America. We have approximately 1,200 elementary schools serving nearly 150,000 children plus 12,500 at the secondary level. This constitutes, for our system, a decline of 14.4 percent in the number of schools over the last 6 years.

We have especially felt this decline in schools in the small rural areas and in the inner city.

The 2 million adult members of our church have gone on record stating that Federal aid offered to all children attending public school, private and parochial schools would undergird for parents the free exercise of religion and make possible parental choice in the education of their children.

It also has expressed its concern for the needs of all schools, public and nonpublic, and particularly for the educationally deprived students. It has a concern for the community in which these congregations are located that operate these schools. One out of five children enrolled are non-Lutherans at the present time; one out of 10 are from the minority groups.

The schools, we feel, are part of the American education scene. However, they have a distinctive commitment and orientation which they consider very vital to education. Through their religious orientation, these schools seek to provide motivation for service and usefulness which comes from a commitment to a power greater than self. They believe they perform a public service and that this service deserves to be recognized in the allotment of Federal funds to make their continued operation possible.

They are not asking for full Government funding of any kind for these educational costs but for sufficient aid that might enable them to exercise these educational options.

The point is that patrons of nonpublic schools are sacrificing heavily to provide their children with an education for which the U.S. Constitution grants them this right, and it is because of this financial stress that many supporters of these schools find the exercise of their rights inordinately difficult and, frankly, some of them impossible and therefore the right becomes rather hollow.

On behalf of Lutheran schools, we ask alleviation of this extreme stress through aid to parents which is constitutionally acceptable, and we believe that this is desirable and necessary for these two points: No. 1, to enable parents a freedom of choice in the education of their children and, No. 2, to make possible the full exercise of their religion for all citizens, including the opporunity to teach their children the moral and religious concepts which they consider necessary.

The CHAIRMAN. We thank you, and we thank all of you for your very fine statements. I am sure there will be questions. Mr. Corman.

Mr. CORMAN. The figure of $5 billion was mentioned as the amount spent by private and elementary schools. Do you have any figures as to how much of that is for tuition?

Mr. THOMSEN. I was the one who used that figure, sir. I do not have any detailed information on those figures or how the U.S. Office of Education came to it. Actually it sounds a bit high to me, but it may be a rough formula they used in taking approximate average costs of students in public school and multiplying it by the 5-million-plus students in the nonpublic schools. That would be my guess as to how they arrived at it.

Mr. CORMAN. I wonder if any of the panelists have differing views on the impact of enrollment if we include the negative income tax or if we eliminate it—that is, for the people who would not owe any income tax but would get a $200 refund or a payment. Do you think that would have any great significance on the number of students you would have in nonpublic schools?

Rabbi SHERER. There is no question that the refundable aspect of this bill is important because it would enable the Federal Government to help so many more parents. We would like to see as many parents as possible helped to exercise their freedom of choice.

On the other hand, as I believe was pointed out in yesterday's testimony, this particular phase ought to be severable from the entire bill so it would afford an opportunity for its constitutionality to be tested without infringing upon the aid to the overwhelming majority of the nonpublic school parents who would be helped otherwise.

Mr. CORMAN. It might serve a very useful purpose in our ability to ascertain whether a negative income tax is feasible for other areas such as welfare and other social costs, and to see if it is administerable.

Do you have any estimate of what the growth in nonpublic school population would be under a $200 tax credit?

Rabbi **Sherer**. I don't have any exact figures. I believe that we could possibly, as we said before, in our additional material that we will present to the committee, try to determine a figure. But I don't believe that the growth as such with new parents would be meaningful at a sum of $200. Its first effect would be to stop parents from running away from the spiraling costs of nonpublic education. I think that the first phase of our battle is to stop that running, that race away from the nonpublic school by parents simply because the tuition rates have gone so high that they can't meet them.

At that particular sum, I doubt whether it would mean a huge, visible growth in nonpublic schools, but at this point, we have to stop the basic decline. That would be a meaningful factor.

Mr. **Corman**. The other matter we worried a bit about yesterday was the prohibition against racial discrimination as a qualification for a school to permit the granting of tax credits. I am wondering if we would run into problems if we permit religious discrimination, whether we should permit it or not, and then it becomes a problem as to whether the discrimination becomes racial discrimination. Do you have any comment?

Rabbi **Sherer**. Our CREDIT coalition comprises a broad range of school systems which has differing policies on school admissions. It is a fact that all our schools of all faiths conform with the Internal Revenue laws as to income tax deduction. It is a fact that all our schools conform with the 1964 Civil Rights Act, which bans discrimination on the basis of race, color, or national origin.

On the other hand, if the Government were to restrict its aid to the nonpublic schools which are religiously sponsored on the basis of religious or nonreligious discrimination, we feel it would violate the first amendment guarantees of the freedom of religion by disallowing groups to organize their school systems in their own manners as they see fit, and it would be excessive entanglement on the part of the Federal Government in the religious system.

Mr. **Corman**. Obviously, since you have fewer schools, you do not have what we call a neighborhood school. This must mean that at least a significant number of your students have to be transported to schools. Is that generally correct?

Rabbi **Sherer**. I believe that each particular faith community within our coalition has different problems. Most of the schools that we represent this morning do have sufficient schools to have neighborhood schools, so that we don't have too much of a busing problem, but there is no question that a minority of our children are being helped to come to a central school where there is no school in their neighborhood.

Mr. **Corman**. I take it you have about one-tenth as many of the public schools. Perhaps they are concentrated in the high population areas. Do you have any indication as to whether students learn better if they are able to walk to school or if they are bused over some distance to school?

Rabbi **Sherer**. I have no indications. Perhaps some members of the panel have.

Reverend **Bredeweg**. We have no facts. We are usually constructed around a parish and local community situation where the students walk to school. Other communities probably face the same conditions as the public sector but, by and large, we are a local community.

Mr. SCHNEEBELI. I can understand how the taxpayer who sends his child to public school is helped with this legislation, but how is the school itself which is in a financial crisis—how is it helped by this legislation? Is there a trickle-down theory here that, as the taxpayer is remitted $200 in his tax bill, that then the schools can raise the tuition by a portion or total of that $200 saving? How is that school going to participate in relieving it of the financial crisis when the taxpayer gets the money?

Rabbi SHERER. Congressman, the financial crisis of the schools is a direct outgrowth of the financial crisis of the parent. The very moment that we put into the pocket of the parent $200 per child, it enables him to contribute that much more to the support of his child going to a nonpublic school, which, ipso facto, means that the nonpublic school is being helped indirectly.

Mr. SCHNEEBELI. What you are saying, then, is that the tuition would be raised to the amount of $200 or less because the person then is able to contribute more? I have not heard this discussed. I have always heard that the taxpayer is helped, but I don't have any knowledge how the schools themselves are going to be helped because the money goes to the taxpayers and not the schools. What you are saying is that the tuition may be raised to the same amount or a portion of it?

Rabbi SHERER. I would not say to the same amount, but unquestionably some of the crisis situations in the schools would be alleviated if the parent who is supposed to pay his tuition and who is delinquent for a year or two would suddenly find he is able to pay the minimum type of bill he has been receiving all of these months and has not been able to pay.

Mr. SCHNEEBELI. Except for the negative income tax, the person who can't pay the tuition may not be paying income tax.

Rabbi SHERER. The parent who cannot pay tuition is not necessarily the parent who is a welfare parent on the poverty rolls or one who does not pay income tax. There are many parents who pay income taxes but, if they have several children in the nonpublic schools, they are really struggling. Many have to moonlight at second jobs at night or their wives may have to find work outside the home. They go through a life sometimes that is a nightmare, without time for recreation, without time to spend with their families in order to be able to meet the nonpublic educational needs.

I would say we are deeply concerned as well with the financial crisis of the parent who does pay income taxes but is suffering in a sense beyond what he should be in order to exercise his freedom of educational choice.

Mr. SCHNEEBELI. I am concerned about the help to the schools which are in this financial bind. I was trying to put these two together. I assumed this is what would happen. I merely wanted reaction from you gentlemen who are faced with this problem.

Reverend BREDEWEG. First, in regard to the negative tax or positive feature, we are certainly for it in principle and want that kind of aid for low-income families. It is just a question that, not being attorneys or the men who write the laws, we don't know how that feature fits into the rest of the situation.

As Rabbi Sherer said, we are for the effect. We will leave the development of the technique up to you.

In regard to your question about the tuition of our Catholic schools we have little financing differences, but the Catholic schools have been subsidized by the parish. Those finances diminish at the elementary level.

We are in a double situation. We have increasing costs and have to switch from financing from parish subsidy to increasing tuition charges. It is not happening easily.

What this will do—at the same time we need more money, we need it from different sources—this will enable us to increase the tuition somewhat to meet the rising costs but, at the time, make this parish switch.

Mr. **Schneebeli.** The effect of it is to have you raise the tuition without the parents having to spend any more money?

Mr. **Burke.** Actually, this tax credit indirectly will help the taxpayer because the parent who sends a child to a private school also pays taxes that support the public schools, and because his child attends a private school, he thereby saves the cost of public school education for that child. So it is not only giving relief in one area, but it is also giving aid in another area. It prevents acceleration of the closing of private schools all over the country.

I pointed out in yesterday's hearing that one of our schools in Boston, in the East Boston section, the public safety department went in and inspected the school building and found it to be unsafe. They ordered the school closed—not to reopen in September. There were 450 children there.

If they take those 450 children and put them in the Boston schools, I believe the cost of educating them is well over $1,000 per pupil. It will cost the taxpayers of Boston almost half a million dollars more if they don't find some way to keep that school open.

These problems exist all over the country. I think you have addressed yourself to a problem that needs to be considered and recognized. In the city of Boston I believe there are some 45,000 children in private schools. If those 45,000 children were dumped into the public schools—I believe the property tax, which now is $176 per $1,000 of assessed value, that the tax would be increased by over $50 per thousand. That would be a confiscatory tax rate and would create real chaos.

I am just addressing myself to this area. What I have said is also true of other communities that I represent. In the last 3 years announcements seem to appear every few weeks in the paper that another school is closing down. I think we have to move quickly in this area.

Mr. **Collier.** I think you have made an interesting statement. Back in the 86th Congress I introduced legislation which is similar to that before us.

Each year I take public opinion polls, and it is rather interesting for me to note past poll results on the question of whether people supported or favored tax credit or tax deduction for this purpose.

Back in 1958 my poll indicated that 66 percent of my constituents opposed, and 34 percent were in favor. In the poll which I took this year, and from which you may draw some consolation, it was indicated that 48 percent of my constituents now favor this type of approach.

But still there were 52 percent in opposition. This leads to my question: What type of public relations and public information programs, on the very items that you emphasized today, are being carried out? There are religious overtones and there are political overtones as we all understand. In fact, in my own State there is an organization that has been sending out rather strong anticredit literature, including letters to Members of Congress.

From one particular church group in my district I have received recently what appears to be organized constituent support for it. I was just wondering if you could tell me what is being done to educate a greater number of people as to the alternatives unless we move in this direction, as to what will happen if the schools continue to close, and as to how opposition is merely going to lead to a chaotic condition where the very people opposing it will feel the impact.

Is anything being done at the local level to point up these things?

Rabbi SHERER. Congressman, first of all, we appreciate your warm words of encouragement. We, too, feel there is a growing awareness among the American public that the Government should concern itself with the needs of the nonpublic schools.

I recall very vividly that the first time I appeared before a congressional hearing in March 1961, I was a laughingstock. The Gallup polls now indicate over the years that slowly but surely the American public fully understands that it must address itself to the problem of the nonpublic schools because nonpublic education is a vital part of the overall educational plans in our country.

As to the specific type of activity in which our CREDIT coalition can engage in, of course, we are limited very much by finances. Until now we have contained our activities to educating the nonpublic school parents to their rights so that the nonpublic school parent first and foremost should understand what their rights are and that tax credit is a vehicle not only to help their children, but to get them out of the doldrums and the frustrations they feel.

It is our hope that with the passing of time and with our continuing activities in educating the public, there will be a growing appreciation of what we are attempting to do so that in your next poll, Congressman, your results will be even higher in favor of Government helping the nonpublic school parent.

Mr. COLLIER. This was a return, in terms of constituent participation, the largest of any poll I used. There were some 17,000 who responded to this question. I thought that might be of some interest to you gentlemen.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Mrs. Griffiths.

Mrs. GRIFFITHS. I think I should comment upon the effect of private schools upon the city itself. In a period of about 3 years, the schools in my district have gone from totally white to totally black, and the parents with children who have remained in that district are parents whose children are enrolled in private schools.

I have talked with the school boards of these private schools, and they are within a year of closing. They cannot keep those schools open. The day they close the private schools, more parents will leave the city.

So, private schools really are helping to maintain the city. This fact is largely ignored, but it is true.

The city of Detroit has just voted twice against any increase in mileage. We can see that it is going to be hard on the Detroit public schools, but it will be more difficult for the private schools because they are paying whatever taxes are being paid. One group of parents is paying taxes as well as paying the increased costs of sending their own children to private schools. They really are doing yeoman service for the city.

The CHAIRMAN. Mr. Conable.

Mr. CONABLE. Thank you, Mr. Chairman.

Rabbi, I would like to ask you is there any way in which we could generalize about the geographic distribution of private schools? I assume they are most concentrated in the Northeast. Probably the Missouri Synod has its school concentrated in the northern Midwest. In general though, are we going to run into any serious regional political resistance to this bill on the grounds that Representatives in Congress are not going to relate to the private school system or be aware of its contributions to the total educational picture? Can we generalize about this? Is the distribution sufficiently general so that it will be able to draw political support from all sectors in this diverse land?

Rabbi SHERER. We are not that politically sophisticated on this panel. We are more in the educational field and the field of religious leadership.

Mr. CONABLE. You must know where the schools are.

Rabbi SHERER. We know where the schools are and we know the realities of politics; at the same time we hope Congressmen who do not have nonpublic schools in their districts will find it in their hearts to support the impact on the nonpublic schoolchildren of the country.

We represent a very broad range. We cover all 50 States of the Union. We have schools all over the country. Some of the faith communities are more concentrated in certain areas. If you take the broad range we represent, we are in every State of the Union, sir, and I believe from the readings we have been getting back from our parents that you will be very pleasantly surprised to find the strong support that tax credits will have in the Congress when hopefully and prayerfully under your distinguished chairman you will bring out such legislation on the floor.

Mr. CONABLE. Is there any area in which the private schools are having greater difficulty than they are in other areas of the country? Is there any concentration of closings, for instance?

Rabbi SHERER. Undoubtedly, sir, in the urban areas where you have the poorer parents residing, our problems are multiplied. Of course, in some wealthier suburban areas, although I don't want to state it, suburbanites are always the more affluent, but in the suburban areas where people seem to earn more, it would seem the schools are in better shape so our primary problem is in the urban areas, although in some of the smaller communities we are faced with problems also.

Mr. Senske wants to add to that please.

Mr. SENSKE. Sir, you are correct that the northern Midwest is where we are highly concentrated, but in the large cities like Chicago, Detroit, Minneapolis, Milwaukee we are having extreme difficulty and also your State of New York is also one of our most troublesome areas.

The CHAIRMAN. Mr. Gibbons.

Mr. GIBBONS. I address my question to the panel; as I understand it, we have essentially two different bills before the committee today. We have the Burke bill, which is a tax credit bill. In other words, you have to pay some income tax before you get a credit. Then we have the Carey bill, which is a negative income tax bill. You can either be poor or live off tax-free income and still get the credit.

My question is which of the two bills do you prefer?

Rabbi Sherer. Our CREDIT coalition is in favor of effective, equitable tax credits for nonpublic school parents. We have a world of faith in this committee and we assure you that we will support any tax credit bill that will come out of this committee under the chairmanship of Mr. Mills.

Mr. Gibbons. We should have you over in the Treasury. We have not had an answer like that since yesterday.

Suppose this committee passed the Burke bill, which did not have the negative income tax feature in it, would you be just as enthusiastic for that as you are for the negative income tax?

Rabbi Sherer. We believe this committee has greater tax expertise. As I said at the very outset, we said we feel there should be a refundable phase to any tax credit bill. We recognize the need and we would be very happy and pleased if that refundable aspect of the tax credit bill would be left intact in any bill reported out.

We would want that, but if the committee in its wisdom and its knowledge of the political realities and of tax laws would omit it, we would not condition our support upon continuing such a phase in a bill.

Mr. Gibbons. As I interpret you, you would rather have the Carey bill, but if you can't get that, you would take the Burke bill?

Rabbi Sherer. We favor a solid tax credit bill, any bill that will come out of this committee.

Mr. Gibbons. Suppose you have a taxpayer who elects not to pay taxes. You can do that now if you just buy enough tax-free securities. Do you think we should give them a credit, too, or rather a negative income tax? Should we give them $200 a head back?

Rabbi Sherer. If someone is violating the law?

Mr. Gibbons. They are not violating the law. This is legal. You buy tax-free obligations and live on them rather than having to pay income tax. Do you think we should give these people $200 back?

Rabbi Sherer. I would not want to see the wealthy enjoy the benefits of this bill. I am sure the committee in writing this bill will do all it can to make sure its ethical implications are well taken care of.

Mr. Gibbons. Thank you.

The Chairman. Mr. Pettis.

Mr. Pettis. Thank you, Mr. Chairman.

We have been talking about the financial problems of the parochial schools. I am not at all certain that this is the major problem. It may be a major problem with the parochial schools, I don't ask this question negatively because I am a product of parochial schools, but aren't the parochial schools suffering somewhat from a lack of support from constituencies they have had in the past, either because of liberalism within the parochial community, in the schools? I have noted recent articles which would indicate that parents no longer see some of the values in parochial schools which they used to see, and isn't it possible that some of the decline in attendance is due to that as much as the cost of parochial schools?

Rabbi Sherer. Congressman, in my testimony which I have cut down for the sake of brevity in the written form, I made a clear statement which said we do not attempt to lay the problem of nonpublic education at the doorstep of finances only. This is a very candid statement, sir. We admit to certain other problems which also have a role to play in the decision on the part of parents to send their children to the public schools, but from every study and from every survey we have seen we are convinced that the financial consideration, the problem of coming up with enough money to pay the children's tuition is the overriding cause of the inability of parents to continue to exercise the freedom of option for nonpublic education.

In brief, of course, the body of nonpublic education has certain ailments and problems, but the overriding, critical problem is that of money.

Mr. **Pettis**. The point I am raising is the more the parochial schools become like public schools, the less incentive there will be for parents to want to send their youngsters to parochial schools regardless of financial considerations.

Mr. **D'Alessio**. The President's Panel on Nonpublic Education published a report entitled, "Nonpublic Education and the Public Good," released April of this year. In it are listed eight factors involved in the enrollment decline. I would like to briefly read those for you, if I may. I think it may shed some light on this.

They are as follows:

> (1) Movement of children from neighborhoods where there are nonpublic schools to neighborhoods where there are none;
>
> (2) Closing of nonpublic schools with resultant transfers to public schools;
>
> (3) Parents' reluctance to send children to financially troubled schools;
>
> (4) Parental decisions to avoid high tuition rates;
>
> (5) Parents' failure or inability to perceive any special educational and/or religious values in a particular school;
>
> (6) Lack of uniqueness;
>
> (7) Changing religious and cultural mores among parents in suburban areas;
>
> (8) A lower birth rate in a particular locality.

The **Chairman**. Mr. Duncan.

Mr. **Duncan**. I am in sympathy with the parochial and nonpublic school and I know some of them are in trouble. What concerns me and some of my colleagues with whom I discussed this legislation yesterday afternoon is the private schools where they have a policy of exclusion, some exclude the blacks or the poor and in my home city of Knoxville, Tenn., we have a very good prep school, a strictly private school. Most of the students come from the wealthy areas of the city, and to my knowledge there are no blacks in the school. I am aware of the fact that many of the private schools require the father to have a certain income before the student is accepted. We exclude the poor. In fact, I don't know of any strictly private schools that will accept a student, although they may have merit as a good student, whose parents do have any money to send them to private schools.

That concerns me more than the sectarian schools. Would one of you gentlemen mind elaborating on that?

Rabbi **Sherer**. Mr. Thomsen will speak on that.

Mr. **Duncan**. My daughter attended a private school for a number of years and I don't think I should be entitled to a tax credit because I choose to send her there.

Mr. **Thomsen**. It would be, of course, highly presumptuous of me to try to speak for the wealthy in turning down this opportunity to get a tax credit, but I would say I think all of us are agreed that maybe some type of ceiling, if it could be reasonably arranged would eliminate the matter of the more affluent patrons of the nonpublic schools being able to be bypassed in the legislation. We don't know how this should be done.

We think it should be studied very carefully because a ceiling is something that has to be applied very carefully with due consideration to size of family and the nature of expenses involved in a large family.

Your comment about the very high tuition rate which in the private schools does have a very definite screening effect, socioeconomically and by extension to some extent racially, I think the record of the schools that are in our association and I suspect the one you are talking about is in it as well, there are some schools which are making truly—and I would say the majority of the schools are making—heroic efforts to broaden the economic base so as to counter this socioeconomic exclusiveness to which you have referred.

Just as an example of that, a survey which we took some 5 years ago with regard to minority students in our schools and then took succeeding surveys at 3- and 2-year intervals show that in a 3-year interval we had more than doubled the number of minority students in our schools.

In another 2 years, we had increased that by 50 percent. In terms of scholarship aid, the schools of the National Association of Independent Schools raised a total of something in excess of $29 million a year for scholarship aid. I know that over 33 percent of that goes for minority students even though they are far lower in the total percentage composition of the schools.

Mr. **Duncan**. How many minority students do you have in the schools? Going from nothing to two is a pretty good percentage increase.

Mr. **Thomsen**. Something in the neighborhood of 12,000 to 14,000.

Mr. **Duncan**. How many schools do you have?

Mr. **Thomsen**. 750 schools, about 750,000 students.

Mr. **Duncan**. Thank you.

I understand the parochial schools do not exclude students regardless of faith. That has been my experience.

Reverend **Bredeweg**. That is true. Race or faith has never been a discriminatory factor. Practically I think the situation develops because you have people of the same faith who built and are supporting the school. We do have, I think, about 7 percent non-Catholics in the schools. There is no discrimination on race or national origin.

Mr. **Duncan**. It does not depend on the financial status of the father?

Reverend **Bredeweg**. No, we have had our own built-in economic equalization plan for years.

Rabbi **Sherer**. I would like to comment, Mr. Chairman, on what the representative of the National Association of Independent School mentioned, a ceiling in the tax credit bill. I would like to state that while we recognize the logic and the need for a ceiling, we hope that the members of this committee, if they choose this path for a ceiling, will take into account the fact that most of the nonpublic schools are

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religiously sponsored and that religious parents tend to have larger families, so that the amount on paper of what a person earns does not necessarily connote his buying power if he has a large family.

We hope you will take that into consideration.

The CHAIRMAN. Mr. Carey.

Mr. CAREY. Let me welcome Rabbi Sherer again. I had the experience of being with him in 1961 and I would deny that he was a laughing stock. Perhaps there were those who treated his testimony with some disbelief, but I think the record since 1961 has shown that his numerous appearances before the Education and Labor Committee was most constructive. Eventually we did pass the Elementary and Secondary Education Act of 1965, which embodied at least in principle many of the recommendations that you are making here today in behalf of nonpublic school schildren.

My first question: What do you understand the public policy of the United States to be, going back, if you will, as far as the northwest ordinance? I don't want to ask you a leading question, but is it not true that the constitutionality of the Elementary and Secondary Education Act and all of the other education acts that we enacted into law, including the issuance of textbooks on a loan basis, supplementary and remedial service, aid to the handicapped, school lunch program, et cetera, has never been challenged? You also make reference to the Supreme Court decisions which actually mention tax credits as a plausible or feasible way of assisting schools. What do you understand the public policy of the United States to be with regard to the public and private educational system of this country?

Rabbi SHERER. Thank you. There is no question as a matter of public policy that our Government has recognized over the years the contribution of public service of the nonpublic school sector to the children of our nation. For that very reason we are included in many programs that the Federal Government has devised over the years, some of which you, Congressman Carey, have mentioned.

The problem has been of how to devise a constitutional vehicle to translate that appreciation of the nonpublic school by the Government into a method of practical help to the nonpublic school parent. For that reason we are so grateful to this committee, to yourself, Congressman, and to the chairman and to those who have introduced these types of bills for at long last coming up with a method for coping with the need that has been recognized for a long time.

Mr. CAREY. Isn't it true also that in a number of States—New York, Pennsylvania, Ohio, I believe—legislatures have attempted to further propound this public policy by in some cases passing legislation to aid institutionally the nonpublic schools, but have run afoul of guidelines or interpretations by the courts? This has been due to the existence of State statutes which are historically related to the will of a past generation, if you will, or due to the absence of clear-cut guidelines from the U.S. Supreme Court on permissible aid. You made reference in two cases in your testimony to the fact that there is a legal question here. Could I prevail upon you to add to your testimony the legal opinion that is available to you or the group in support, first, of the constitutionality of the pure tax credit, namely, the tax credit that would go to a taxpayer who has a tax liability?

Secondly, could you also supply the committee with your legally constituted opinion of the constitutionality of what has been called the negative income tax? I would rather see that described as the tax remission regardless of reliability. The reason I object to the term "negative income tax"—and I hope my friends who are engaging in a chuckle will listen to what little contitutional law I know particuarly since I have not been wrong yet on any of the bills I have authored is conerned, term can be illustrated by the example of a taxpaying family who would receive assistance if this feature remains in the bill.

It is the case of a family who owns a house and pays on that house real estate taxes and sales taxes in the State of New York at the rate of 7 percent of all of their purchases, as well as numerous other taxes, including water and sewage. These taxes in large measure are deducted from the Federal income tax. After childhood deductions are made, the family has a net zero liability. But granting the family a $200 refund is not a negative income tax because the family has paid taxes on its taxable income, even though they have no net liability. There is no reason why they should be denied support that would enable them to have their children attend schools along with their neighbors.

We are not talking here about destitute or working poor. A fireman or a policeman or a sanitation man with a family of three or four paying real estate taxes in Newark, New York or, I daresay, in Philadelphia might well end up with zero liability on Federal income tax. I am not going to be the one who wants to impose further liability on firemen, sanitation, and policemen.

But we are going to say those who are the strength of the civil service in our city that they should not receive funds along with other parents to have their children attend the nonpublic schools? In other words, we are not talking just about the relief or welfare poor here. We are talking about those who do not have tax liability because they are paying the egregiously high taxes within the States.

Rabbi SHERER. As to your first question on the constitutionality of income tax credit for nonpublic school parents, we are first satisfied, of course, with the views of the attorneys of the Government agencies whose spokesmen addressed this committee yesterday and who seem to feel in their wisdom that income tax credits are constitutional. We have been advised of such by our attorneys as well, but we feel if the attorneys of the top level Government agencies consider the vehicle as constitutional as we have been told and as this committee was told yesterday, we accept their opinion.

As to the problem of what you want to call a tax remission, what others call negative income tax, what some call a refundability clause, unquestionably there is a need to help these elements. Justice would say these elements should be helped.

To those who question the constitutionality and legality of this clause we have a simple answer: Why not do as the Government spokesmen yesterday requested? Put such a clause in as a separate vehicle or as a separate aspect of a tax bill and let the courts decide. We will never know unless the courts decide.

Mr CAREY. Let me interrupt to say in the past when we have written legislation on this very point, and I was on the panel that wrote it, we were trying to protect what I consider to be a cornerstone and cardinal principle of congressional legislation, namely, that when the Congress acts, it carries in its legislation a clear-cut presumption of constitutionality because the Congress in the first instance is the judge of the constitutionality of its laws. I have somewhat restrained from handing over any power to another branch of the Government. Thus, you see, in the past I have been against separability clauses.

Rabbi Sherer. To that I can only say "amen."

Mr. Carey. I am mindful of Mr. Dooley's remark that he was not sure whether constitutionality followed the flag or whether the court followed election returns.

Civil liberty groups or anyone else might like to attack an act of Congress which makes it possible for poor people to send their children to a school of their choice for better education. I would like to see that case brought before the court. I don't want to presume what the court would do, but I don't think the organization that brought the case would stand very well in the public eye attacking the poor's participation in the bill.

I would like to talk about the economic impact on the country of the continued liquidation of the nonpublic school system. Are you prepared as a group to give us an estimate of your total expenditures in behalf of education separately or together as it contributes to the national economy?

Rabbi Sherer. We intend to, Congressman Carey, submit that in supplementary material for the record after the hearings.

Mr. Carey. I would like to have that.

(The following information was received:)

Nonpublic School Expenditures and Contributions to the National Economy

To answer queries regarding what nonpublic education contributes to the national economy is very difficult since there has not been extensive research on the subject.

We believe the final Report of the President's Panel on Nonpublic Education entitled, "Nonpublic Education and the Public Good" contains the kind of information which the House Ways and Means Committee desires. The contents of this paper are mainly excerpts pertaining to the subject from the above Report.

Exact amounts expended by the nonpublic schools is not available nor does time permit us to extensively research the subject so that it may be included in the record as part of our testimony. Because the per pupil cost in a big majority of the nonpublic schools is less than that of the public schools, the amount of nonpublic school expenditures would not accurately reflect the amount that they contribute to the national economy. This is better reflected in the figures that the President's Panel included in its Report under the topic "Transfer Costs."

The Panel based its cost report on studies done by research teams from the University of Michigan, the University of Notre Dame, the National Education Finance Project, the Commission on School Finance, and the United States Office of Education.

In its Report to the President, the Panel included the following:

"Estimating cost of transferring all nonpublic school pupils to public schools is exceedingly difficult. A research team from the University of Notre Dame developed three categories, described as: (1) excess capacity formula, which assumes a decrease in public schools' pupil/teacher ratios; (2) crude excess capacity formula, which assumes no change in pupil/teacher ratios; and (3) high excess capacity formula which assumes that the pupil/teacher ratios will rise to the highest level experienced during the past six years. Using these formulas, the researchers estimated the total cost in a range from approximately $7.7 billion (low excess capacity formula) to approximately $4 billion (high excess capacity formula). The Panel believes the higher estimate is more realistic in view of the trend to reduce rather than to increase pupil/teacher ratios in public schools."

The United States Office of Education in a study entitled "Projections of Educational Statistics to 1979-80" estimates the nonpublic schools' total annual operating costs at approximately $5 billion. This figure does not include capital costs for facilities.

In his Message to Congress on Education Reform on March 3, 1970 President Nixon stated that, "If most or all private schools were to close or turn public, the added burden on public funds by the end of the 1970's would exceed $4 billion per year in operations, with an estimated $5 billion more needed for facilities."

The Panel Report goes on to state that, "The problem would vary from State to State. In the rural and less densely populated states of the South and West, nonpublic school closings would have little effect. On the other hand, seven populous industrial States (New York, Pennsylvania, Illinois, New Jersey, California, Ohio, and Michigan) would be called upon to absorb seventy per cent of the costs associated with the transfer of nonpublic school pupils to public schools."

We believe the Panel is correct in its observation that "These seven States would face a severe economic impact because: (1) public school costs are already high in these areas; (2) public school enrollments have not fallen as much as in other parts of the Nation so that the capacity to absorb more students is restricted."

In its study the Panel considered results from research by the School of Education of the University of Michigan to indicate what the burden of nonpublic school closing would have upon certain major cities. Using Chicago, Detroit, Milwaukee, and Philadelphia for their laboratories, these researchers drew an "urban financial profile."

The question posed by the researchers was this, "Can the public school system of these cities, without securing additional facilities, absorb the pupils now attending nonpublic schools if all the nonpublic schools were closed?" The researchers concentrated on the Catholic schools, which enroll the largest number in each of these cities. They found that a number of important variations exist as the following quotations from the Report indicates:

"In Chicago, A. Epstein and Sons, Inc., estimated rehabilitation and replacement cost for the public schools and concluded that $1,103,113,846 would be required, at current prices to bring Chicago school facilities into good condition. But the University of Michigan researchers added:

'If, in addition it were necessary to provide facilities for approximately 85,000 elementary pupils from the parochial schools and 45,000 secondary pupils, it would be necessary to increase this budget by at least $464,000,000. This would increase the total to approximately 1.6 billion dollars.'

"For Detroit, a building program to house adequately all public school pupils would require a minimum expenditure of $234,000,000. If all the Roman Catholic schools of Detroit were closed at once and their students were to be housed by the Detroit schools, an additional $174,500,000 would be required. The research report also noted that if a massive shutdown of Detroit's nonpublic schools were to precipitate a large exodus of families from the city, 'Closing nonpublic schools might have greater financial implications for fringe suburban areas than for the Detroit public school system.'

"Closing of Roman Catholic schools in Milwaukee would add $47,800,800 in construction costs to the $76,000,000 program which has been authorized."

The University of Michigan research summarized the report for the three cities in the following manner.

"It has been projected that if all the nonpublic schools which are experiencing financial difficulties, including many Roman Catholic schools, were to be closed immediately, the additional cost of housing pupils now in attendance would be as follows: Chicago, $464,000,000; Detroit, $174,500,000; and Milwaukee $47,800,800. The funds ($686,300,000) would be in addition to resources required to fund the long-range construction programs for each of these cities."

The research by the University of Michigan team show that Philadelphia would be in more serious straits. Their report indicated "that between 1965 and 1971 the Philadelphia school district spent $381,163,000 for capital improvements, but despite these herculean efforts the remaining capital program proposed for 1972-77 still carried an estimated price tag of $339,244,000. An additional $60,000,000 for 1979-80 would be needed to complete the currently envisioned capital program. Total cost of all phases of the school building effort would reach $880,400,000. With inflationary pressures, the total cost could be over $1,000,000,000."

The Panel Report quotes the University of Michigan researchers as stating that:

"Accommodating the 136,500 pupils now in the Roman Catholic schools of Philadelphia in accordance with the goals and priorities set forth would require a necessary additional expenditure of almost $600,000,000. Housing the 58,900 secondary pupils will require about $290,000,000 and the 77,300 elementary pupils approximately $310,000,000 with no allowances for inflation.

"To consider adding a capital program of $600,000,000, even if spread over the next decade, in the existing long-range capital program for the Philadelphia area seems outside the range of credibility, because 1971 has been a year of crisis for capital programs of Philadelphia public schools."

The National Educational Finance Project, in its report entitled "Future Directions for School Financing" summarized the overall dimensions of school construction costs as follows:

"The school building shortage is a reality which cannot be overlooked in school finance programs. Even with the unprecedented increase in school construction since World War II, a deficit of 500,000 classrooms remained in 1968. This backlog of needed construction accumulated during the Depression years and World War II. Especially in urban districts, antiquated and educationally obsolete classrooms which normally would have been replaced have remained in use.

"Between 1948 and 1968, the number of classrooms constructed each year increased from 30,900 to 75,400 and the average expenditure per classroom increased from $32,815 to an estimated $67,432 . . . In the decade of the 1970's the Nation will need approximately 120,000 classrooms per year at an estimated annual aggregate cost of $7.8 billion in 1968–69 dollars . . .

"If these new construction needs are accurate, positive action must be taken to provide the needed funds or a moratorium on construction will result with millions of school children being illhoused and illeducated."

We are convinced from the evidence cited by the Panel and other research teams that having to meet normal public school enrollment projections will place a great public burden upon the taxpayers. The burden will be immensely magnified if large numbers of nonpublic school pupils are transferred into the public schools.

The President's Commission on School Fnance in its final report to the President makes the following significant observation:

"Cost projections are startling. Outlays for education will rise substantially during the next decade if present trends continue.

"Total expenditures of public school systems during the 1970–71 school year came to approximately $45 billion. During 1975–76, according to projections provided to the Commission, expenditures are estimated to reach $60 billion, and will continue climbing to the end of the decade, so that in 1980–81, they will come to some $64 billion. This is in 1970 dollars. If we assume that price increases at an annual rate of three percent, these figures will be approximately $69 billion for 1975–76 and $86 billion for 1980–81. Paying for education is going to place enormous strains on the Nation's taxpayers. What is more, the cost of other public services are going to climb at least as much if not more."

Finally, CREDIT concurs with the President's Panel when it states, "that most public school budgets, already heavily burdened by soaring costs for present and projected programs, would have to be drastically revised if thousands of nonpublic school pupils were added to public school rosters."

Supplemental Statement of the National Catholic Educational Association

CATHOLIC SCHOOL FINANCES AND THE EFFECT OF TAX CREDITS

These statistics and commentary are being submitted pursuant to requests by various Ways & Means Committee members during the August 15 hearing of the C.R.E.D.T. nonpublic school group. At that time, additional financial information and opinions were requested, especially in regard to tuition charges and the effect of federal income tax credits. The following is a presentation of Catholic school financial data.

First, however, it is best to state that such data is newly available on a national level. Prior to 1969, only school-and-pupil type statistics were available in national directories. In 1969, NCEA was sponsored by the Carnegie Corp. of New York to gather extensive data for the first time on Catholic elementary and secondary schools and to establish a continuing annual process. The grant was renewed by Carnegies in 1970, and three annual cycles have now been completed covering a five-year period (1968–69 through 1971–72). The more intensive year was 1970–71, when NCEA and National Center for Educational Statistics (USOE) gathered data jointly, and were able to data process all 11,000 questionnaires with the help of a USOE grant. Information for the other years was obtained via summary figures compiled by diocesan school officers. There have been, of course, various diocesan studies in recent years (St. Louis, Philadelphia), state studies (new York, Illinois), and federal studies (President's Commission on School Finance). To our knowledge, the NCEA research department is the only agency gathering annual data on Catholic schools on the national level. One final point. While we recognize better than most that parish and school accounting need great improvement, we trust the basic conclusions and trends indicated, since the procedure is consistent and the interpretation by various school offices correlates with these conclusions and trends. At the same time, we realize that more extensive and refined data is needed.

REVENUE COMPONENTS

There are three distinct financial types of Catholic schools, i.e. parish elementary schools, parish and diocesan high schools, and high schools sponsored by particular religious communities. Each has a different revenue base, as illustrated by the following national averages for 1970–71.

[In percent]

	Elementary schools	Secondary parish/diocesan	Private
Tuition and fees	31	61	80
Parish/diocesan subsidy	60	27	
State and other	9	12	20
Total	100	100	100

Since these percentages are national and averages, they do not reflect particular variations often present. For example, it is sometimes the custom of a diocese not to charge "tuition", but to fund schools through the parish and the diocese. Due to rising costs and decreasing parish funds, however, this practice is now rare, but does continue in some places on the elementary level (Philadelphia) and does lower national averages.

In regard to parish and diocesan subsidies, they no longer are able to carry the revenue share which they traditionally have carried. The following percentages indicate the change in trend on the elementary school level.

[In percent]

	1967–68	1968–69	1969–70	1970–71
Tuition and fees	28.9	27.4	26.8	31.4
Parish/diocesan subsidy	60.9	63.7	64.4	59.5
State and other	10.2	8.9	8.8	9.1
Total	100.0	100.0	100.0	100.0

In other words, and this is consistent with local evaluations, as costs increased parishes first turned to additional parish funds and to any available reserves. However, by 1970–71, parishes could not maintain such an operational burden and reserves were also depleted. Consequently, the transition to tuition began.

These percentages are not yet available for 1971–72, but we do have information regarding the ranges of tuitions charged on the elementary school level.

[In percent]

Tuition range	1970–71	1971–72
0 to $100	71.5	38.7
$100–$200	21.7	43.7
$200–$300	4.2	12.6
Over $300	2.6	5.0
Total	100.0	100.0

Tuition charges are still low in elementary schools, but they are increasing rapidly. While one-third charged less than $100 in 1971–72, this group declined substantially. Where 22% charged $100–200 in 70–71, this range more than doubled and comprised the largest group in 71–72. The $200–300 group tripled. Tuition charges are clearly rising in an alarming manner.

On the secondary level, it is customary to charge larger tuitions. The national average in 1970–71 for tuition and fees in diocesan and parish high schools was $285. For private high schools sponsored by religious communities, it was $475. Parish and diocesan high school tuitions have been increasing about 20% annually, and the more costly private schools about 12–14% annually.

PER PUPIL COSTS

The following is a summary of per pupil costs by national averages. These costs do not reflect the contributed services of religious personnel and are probably somewhat understated by the lack of sophisticated accounting procedures.

	1968-69	1969-70	1970-71	1971-72
Elementary	$178	$200	$240	$270
Parish/diocesan secondary			480	530
Private secondary			590	670

Aside from contributed services (in 1970–71, about $70 per pupil on the elementary level and $170–200 per pupil on the secondary level), these figures are not far off. The detailed St. Louis diocesan study of 1968–69 stated elementary school per pupil costs at $177. National per pupil costs are well below those of the public sector, especially on the elementary level, mostly because of the lower salaries still paid in many areas. However, it is often the increase of these same salaries which is causing costs to rise so rapidly.

Given the data presented, it is illustrative to project what is likely to happen in the immediate years ahead. Assuming that costs increase 15% annually on the elementary level and that other sources of revenue continue to provide their 1970–71 dollar amounts (which many parishes cannot do), the following shows minimum per pupil tuition requirements on the elementary level for the next few years. The 1970–71 figures were reported by 95% of the schools and are the best available.

	Percent	1970-71	1971-72	1972-73	1973-74	1974-75
Tuition and fees	31. 4	$75	$105	$145	$190	$245
Parish/diocesan subsidy	59. 5	143	143	143	143	143
State, other	9. 1	22	22	22	22	22
Total	100. 0	240	270	310	355	410

Should these be the requirements and the sources of revenue for the next few years, it seems that the most effective and desirable tax credit formula for the elementary level would allow a percentage credit of tuition, rather than a total 100% formula, so that increased burdens are shared or lightened proportionately. However, this is the prerogative and expertise of others.

It should be pointed out, nevertheless, that parish dollars may not be able to remain constant and that tuition charges may have to increase even more. There are no comprehensive national figures available regarding parish income trends, but particular dioceses have published complete financial reports. Judging by these reports and by the declarations of many administrators with whom we cooperate regularly, parish incomes are generally not increasing in proportion to increased costs, and some economically affected areas are even decreasing. Liquid reserves are pretty well gone, as the published financial reports indicate.

During 1970–71, NCEA did undertake a very limited (5%) sample survey of parish income and school salary costs, involving 37 of the 150 dioceses. On the basis of these returns, parish income dollars increased about 15% from 1965 to 1970, while school salary costs increased about 68%. In 1965, just over one-third (35%) of parish income was spent on the school. In 1970, over half of the income (53%) went for school purposes. All of this seems to correlate with the situation as we see it. In view of the tremendous effort sustained by many parishes and schools, the parish will continue to provide whatever it can, but this amount probably reached a peak within the past few years and may not be able to be sustained. In any event, parish subsidy can hardly be expected to provide anything approaching the past two-thirds share of total school revenue. When we refer to the transition to a tuition based school, we assume that parish subsidy will always be a significant revenue component, as much as possible in view of past and present efforts, but the major share of future revenue must apparently come from individual parents whose children attend the school.

LOW-INCOME FAMILIES

In view of the "negative tax" discussions (which some prefer to call a "positive tax"), our posture is that we wish to extend any possible benefits to those who pay little or no tax. These are the parents who are struggling the hardest to keep their children in our schools. Furthermore, Catholic schools have developed their own economic-equalization policy over the years so that there would be no discrimination on the basis of income.

The question does not seem to be whether or not to extend such benefits, but how can these benefits be extended. If tax credits are the best avenue, economically, politically, administratively, and constitutionally, then we support the "negative tax" provision. We do not believe, however, that this provision should be so integral and substantial to legislation as to deny benefits to the greater majority of parents should this particular provision be found wanting in any respect. For example, should this provision be found unconstitutional, this would only mean that another avenue must be found to assist those who pay low taxes. It would not mean that a sound and viable method had not already been found to assist most parents, assuming this was constitutional.

CONCLUSION

We again thank the Committee for the opportunity to express and explain our position in regard to federal income tax credits. We are most willing to assist particular members should they desire our services.

Mr. CAREY. You are educating 5 million people and I read you have 178,000 teachers employed in one school system alone, full time. I am aware that we now have for the first time in the history of our country a teacher surplus. Teachers have been going all over the country trying to find teaching contracts and positions.

I would like to remind the committee that most recently in October we funded a $3.3 billion investment credit for private industry to create jobs and we hope to create a few hundred thousand jobs. We are spending much more in the job-creation sector directly for emergency unemployment programs in the public sector.

So we are creating jobs in the private sector through the job development credit or the investment credit. I can't see the difference between the tuition credit and the investment credit in that the former attempts to help teachers in their professional capacity.

If this liquidation continues, what would lead us to believe that the public school system could absorb all the teachers as well as the administrative personnel? Isn't there now a surplus of qualified teachers in the public school system?

Rabbi SHERER. As we stated in our testimony, we feel if such a terrible day would occur that the nonpublic schools would continue to decline and close at this type of rate, it would be a calamity for the school systems financially. It would be a disaster for our country. We can't possibly see how the public schools would absorb all the millions of children and, above all, we feel it would fly in the face of the basic right of the diversity in education which is the hallmark of our country. We feel that is important.

Is not only a threat of school closing a motive to come out with tax credits? We feel there should be no American denied his right to choose the type of school he wants for his child because of what we have called "pocketbook persuasion."

Mr. CAREY. You have convinced me on that point. Let me advert again to the economic factor here. I think somehow there has been a mythology conveniently adopted in the public mind about who attends these schools. Recently I read that among the poor of New York City—they rank those—the Puerto Ricans and Spanish-speaking are considered the poorest element.

Rabbi SHERER. I believe the committee would be surprised that a third sector, which is still a minority, are the Jewish citizens in New York. In some sectors in New York, some Jewish neighborhoods are serious poverty neighborhoods. I personally know of thousands of parents of Jewish children who suffer incredibly just for the sake of being able to send their child to a Jewish day school.

I think it is wrong for us to permit people to suffer so much because they want to exercise a constitutional right.

Mr. CAREY. I want to emphasize the point raised by Mr. Griffiths. Whenever a neighborhood loses any resources such as a library, a place of recreation, or when it loses some form of choice as represented in the nonpublic schools, isn't it true the city fabric breaks? When a family loses the availability of a school of its choice, there is not a transfer to the nearest public school or to a wealthy private school in the countryside. The family is displaced to the suburb. Isn't that true, and we lose the middle-income family from the innercity?

Rabbi SHERER. That is true. We have seen that time and time again.

Mr. CAREY. I have not seen demonstrations recently about school finance. We have had demonstrations about teachers and so on. I hope that day is past and public funding for public schools will be more effective.

Do you know of any case where the nonpublic schools have not supported to the fullest extent of their capacity the funding of public schools? Do you think organized resistance or even unorganized resistance occurred in terms of supporting the public school sector? What is the policy of the nonpublic sector toward supporting the public schools?

Rabbi SHERER. There is no question that the nonpublic schools are anxious for the continuation of public schools. They support all types of aid to the public schools. We believe the public schools should be helped in their own financial problems.

The only thing we would object to would be if anyone would come up and say that they would make aid to the nonpublic schools strictly conditional upon solving the problems of the public schools. Nonpublic school people are Americans and, as Americans, they want to see the public scholl system continue to flourish.

Mr. CAREY. Concerning demonstrations, I believe that recently in the Shaw area in Washington, D.C., and in one incident in Harlem, there were demonstrations by black and other minority citizens against the closing of nonpublic schools, and they attempted to prevail upon the nonpublic school authorities to find the funds somewhere to keep that opportunity available. Isn't that an actual case?

Rabbi SHERER. We have also had demonstrations by minority groups in New York City and in Albany, where blacks and Puerto

Ricans have picketed the offices of Governor Rockefeller, thinking perhaps he, not personally, but his State administration could solve these problems.

Mr. Carey. We don't want pickets going to Governor Rockefeller. He is in Israel.

Rabbi Sherer. He has just returned.

Mr. Carey. May I state to the panel I think your testimony has been most helpful to us in resolution of this question and I find little disagreement with any of you. Thank you.

The Chairman. Mr. Byrnes.

Mr. Byrnes. I wonder if you gentlemen could give us some factual information with respect to the costs in your various systems. Rabbi Sherer, you mentioned in a general way the tuition charges, but I would be interested in any more specific information you may have. I suppose this would vary to some degree among the various sectarian school systems as to cost, but have you made some studies on the basic cost per sutdent? I suppose we would have to make a differentiation between elementary schools and secondary schools. What do you have in that area?

Rabbi Sherer. Congressman Byrnes, we indeed have not only made a study but we are at the point of completing a detailed memorandum, which we want to send in to this committee, clearly enunciating the range of costs between the different groups.

(The information referred to follows:)

In answer to the House Ways and Means Committee's request for information regarding per pupil educational costs and tuition charges, C.R.ED.I.T. submits the following:

AVERAGE NONPUBLIC SCHOOL TUITION CHARGES, 1972-73 SCHOOL YEAR

	Elementary	Secondary
Catholic schools:		
Diocesan	$100	$243
Private	200	436
Jewish schools	600	600
Lutheran schools	150	500
National Association of Christian Schools	500	650
National Association of Independent Schools (median)	1,300	1,600
National Union of Christian Schools	450	600

AVERAGE NONPUBLIC SCHOOL PER PUPIL COST, 1972-73 SCHOOL YEAR

	Elementary	Secondary
Catholic schools	$270	$600
Jewish schools	700	1,200
Lutheran schools	404	724
National Association of Christian Schools	670	875
National Association of Independent Schools	1,494	1,748
National Union of Christian Schools	500	700

The above schools represent 96% of the total nonpublic elementary and secondary school enrollment.

Rabbi Sherer. But we feel the committee should have a picture of those costs as it studies and deliberates on what to do to help the nonpublic school parent.

Mr. Byrnes. I think it is important to focus on an aspect of this problem which is most important and also to point out the burden that the individuals may bear not only by way of tuition costs but also through their contribution to the religious community, which then is paying the costs. In some cases they are paying both ways, but you can't get that picture very well if all you do is look at the tuition or fee side of it. I am pleased that we will have that information.

What are the normal tuition charges? Do those vary? Do the Lutherans charge a little differently from the Catholic or Jewish schools? Let us keep it on the elementary school basis. What would each of you have as your general charge for elementary school tuition?

Mr. SENSKE. Many schools don't charge tuition at all. They solely operate the school through donations and of the congregation itself. Of those who do charge tuition, at the elementary level it is $150 a year. For secondary, it is about $500.

Mr. BYRNES. What about the Christian schools?

Mr. ZYLSTRA. They are mainly tuition-paying schools. I would say at the elementary level the tuition is at $450 to $500 per child. The secondary level would be somewhat higher, approximately $600 to $650.

Mr. BYRNES. In each one of these cases you do very much like hospitals—carry a certain charity load, I am sure.

Mr. ZYLSTRA. Yes; there is some of this.

Mr. BYRNES. Where the charge can be paid by the parent, that is generally what it runs?

Mr. ZYLSTRA. Yes; but there are a number who pay far less because of their inability to pay.

Rabbi SHERER. I would say the Jewish schools in both elementary and secondary run about $600. Of the elementary, it is about $400 average. Of course, there are elementary schools that go up to $1,500, and other elementary schools which are $100 or zero. We have a big problems with scholarships that we have to take care of with children in poverty areas, but I would say the average is about $600 across the board.

Reverend BREDEWEG. We have the elementary level, the parish structure, the secondary parish high school and then a private community high school; so, on the secondary level, the parish would average about $520 per pupil. Your question is tuition?

Mr. BYRNES. I am talking about what you charge the individual student.

Reverend BREDEWEG. In the parish secondary level, $300 to $310. The private secondary would be considerably higher, about $700. Like the Lutherans on the elementary level, we have structured it through the parish and have been low, but that is drastically changing. That is what I mentioned before, where the parish is out of funds and switches to tuitions and so on.

In the past year, in 1970–71, 71 percent of elementary schools charged tuition of less than $100. You have to consider also there are some areas like Philadelphia which have a policy that there will be nothing called tuition. Everything is taken care of by the diocesan and the parish.

In 1971–72, about 56 percent were charging from $100 to $250, so it went from almost three-quarters charging less than $100 to more than half charging $150 and $300. That was last year. This year, I am sure, there will be the same type of increase on the elementary level, so the tuitions obviously are increasing.

Mr. BYRNES. Do you find in your Catholic schools that within a given area your costs are about the same, whether by a parish or order? I am not talking about tuition now. I am talking about the cost of educating a child.

Reverend **Bredeweg**. Ours is lower on the elementary level. That is complex, too, because the sisters are really supplying the staff on the elementary level and we don't account nationally well enough to charge that into per pupil cost for the contributed services.

Mr. **Byrnes**. I am inquiring about the costs, and you would not impute a teacher cost to nuns that you did not have to pay? It would the the actual out-of-pocket costs that you have?

Reverend **Bredeweg**. We have figures for 1970–71. Our best figures are per pupil income, which includes the revenue from contributed services. It is all gone by the time the school year is over.

Mr. **Byrnes**. I suppose in the nonsectarian areas you do have your basic cost figures per pupil, and your tuitions, for the most part, cover or are equated with the cost because, other than charitable contributions, you don't have any community that you can depend upon as a basic subsidy, or do you?

Mr. **Thomsen**. This is true in a way. I don't have the figures for elementary and secondary. Most of our schools are secondary or combination elementary and secondary. Our tuition rate would average around $1,700, and that would constitute about 82 percent of the actual education costs.

That sounds very high, and that means that the cost per student is around $2,000. Despite this, our figures show that over 50 percent of our schools are operating at a deficit and that the differences are made up in a very small amount by endowment.

There is a popular superstition that all of our schools are well endowed. This is simply not true. Less than half of them have any endowment at all and, with most of them, they have about 3 or 4 percent of their annual costs made up by endowment. So it is actually gifts, contributions from friends, patrons, parents, who make up the difference.

Mr. **Byrnes**. I think one thing that bothers some members of the committee is that in nonpublic, nonsectarian elementary schools, the tuition is, I gather, relatively small and in many cases nonexistent.

As the bill is drafted, this will not be reflected immediately. It is simply an increase in the tuition or fees to $200. I suspect that would definitely be the case under the draft of the recent bill introduced by the chairman and Mr. Carey. However, I think under the approach in my bill and in Mr. Burke's bill there would be a little tendency to have some restraints on tuition increases, in that every time you raised tuition by a dollar, at least 50 cents of that would have to be paid by the individual himself.

I have some question as to whether it isn't desirable to have some constraints and have the community itself, at least to the degree it can support the institution, contribute substantially to the support of its school. You relieve that to some degree when you automatically say you are now going to get $200 from Uncle Sam for every student, because, in a way, the bill would amount to that.

I can see the real justification for that in the help which the groups that maintain these schools have to have. I am also thinking in terms of the help the individual has to have, with the larger family particularly. If tuition is going up, he is not going to have any relief whatever in many cases, and I worry about that aspect and approach.

Reverend **Bredeweg.** It will not happen, in my opinion, in the Catholic elementary schools that you will automatically increase the amount. Whether there is a tax credit or not, there must be a transition toward charging higher tuitions.

Mr. **Byrnes.** If you had no tuition at all, and this bill, particularly if with a refundable feature, became law, there would be no restraint at all on imposing a $200 fee because it wouldn't cost the individual 1 penny, and you can extend him credit?

Reverend **Bredeweg.** That wouldn't be the case in very many areas of the country.

Mr. **Byrnes.** That is one of the problems, and I raise it as a supporter of the concept that we have to do something in this area. But it is a problem I see, and I think we had better direct our attention to it from the start.

Mr. **Burke.** Would the gentleman yield? Isn't it true that with rising costs, tuition will increase anyway, and that it will happen whether the bill is passed or not? If they are faced with rising costs, I don't see how they can openly not increase tuition costs.

Mr. **Byrnes.** I didn't want to get into an argument about it. I have people writing to me complaining that I was sponsoring a bill which took care of only half of what the individual parent had to pay for his student.

Rabbi **Sherer.** Costs of tuition have to go up in an inflationary economy, but, above all, I want to make it very clear that the aim of us who advocate tax credits is not to supplant the existing level of charitable giving on the part of the religious faith community to their own schools. We want to maintain that level of charitable giving. We would like to increase.

The best refutation of those who argue the point that you just made, Congressman Byrnes, is that if the religiously sponsored schools were to merely take this $200 or whatever figure you will decide on—using the $200 figure as an arbitrary figure—will take this $200 figure and will use it to reduce the amount of charitable giving, then we are just where we started out to begin with. Under this system, the schools will continue to close and we have accomplished absolutely nothing.

The only way we can accomplish those aims—and the leaders of the religious schools realize that full well—is to maintain and increase even charitable giving. We don't want people to stop giving charity to the schools. We want added to that—if the parent will get relief from tax credit, we will at least stop the terrible race away from the nonpublic schools, and we will make realistic the freedom of choice of the nonpublic school parent.

The **Chairman.** Mr. Brotzman.

Mr. **Brotzman.** I think you make the case very well, Rabbi, and the panel. I have had an opportunity to talk to the nonpublic school leaders out in my own community; that is, Rabbi Manuel Laderman and some of the Catholic leaders.

Did you pick this particular device, the credit approach, because you thought that it was least susceptible of being struck down because of constitutional objections?

Rabbi **Sherer.** We took this device because we felt that under the constitutional restrictions at this point, it is the most viable vehicle to help a disastrous situation for nonpublic school parents.

Mr. **Brotzman**. I think the case is being made quite well, Rabbi, for the need. I don't think people like to talk too much about the constitutional aspects. I was trying to get the witnesses yesterday to be more specific. It is true as somebody said, there is a presumption of constitutionality that surrounds an act of Congress.

My question is, Do you have a composite brief relative to the constitutional aspects of this problem that might be submitted to the committee?

Rabbi **Sherer**. This will come from Mr. Zylstra, who was a member of the Commission on School Finance.

Mr. **Zylstra**. I believe it was mentioned under the subject of "Constitutional Criteria." The panel did struggle with this long and hard. We did have constitutional expertise, and we do have research available which we will also compile for the committee and submit it. We had constitutional opinions from Freund of Harvard and also Whalen of Fordham. We have documents pertaining to their particular studies. We will submit these to the committee.

(The following was subsequently received:)

MEMORANDUM OF "CITIZENS RELIEF FOR EDUCATION BY INCOME TAX" ON THE CONSTITUTIONALITY OF H.R. 16141

INTRODUCTION

Title II of the Public and Private Education Assistance Act of 1972, H.R. 16141, provides for a federal income tax credit (not to exceed a specified maximum) for tuition paid by a taxpayer "to any private nonprofit elementary or secondary school during the taxable year for the elementary or secondary education of any dependent." It has been suggested that a provision should be added to Title II making the credit "refundable"—*i.e.*, authorizing a tax "refund" in the amount of the credit to any taxpayer who is entitled to it but pays no federal tax.

The Sixteenth Amendment to the Constitution authorizes Congress to "lay and collect taxes on incomes" and Article I, Section 9 impliedly authorizes the appropriation and expenditure of "public money" for permissible legislative objectives. The issue discussed by this Memorandum is whether the statutory mechanism established by H.R. 16141—with the possible addition of the "refundable credit"— is excluded from Congress' general power over taxes and expenditures by reason of the First Amendment's directive that "Congress shall make no law respecting an establishment of religion." It is our position that the constitutional language, as construed and applied by the Supreme Court, permits the relief of the kind contemplated by H.R. 16141.

DISCUSSION

I

It is useful—though seldom dispositive—to begin with the precise language of the Constitution. (The Supreme Court did exactly that in *Lemon* v. *Kurtzman*, 403 U.S. 602, 612 [1971].) It forbids laws "respecting an establishment of religion"—five words which, as Chief Justice Burger observed, are "at best opaque." 403 U.S. at 612. What they plainly prohibit are "a union of government and religion" (*Engel* v. *Vitale*, 370 U.S. 421, 431 [1962]) and any action "respecting" such a "union"—*i.e.*, "steps that could lead to such establishment" (*Lemon* v. *Kurtzman*, 403 U.S. at 612). The words themselves do not invalidate laws which incidentally benefit religious institutions along with others. They plainly demand the kind of neutrality which would foreclose "official support of the State or Federal Government . . . behind the tenets of one or of all orthodoxies" but would recognize "the value of religious training, teaching and observance and, more particularly, the right of every person to freely choose his own course with reference thereto, free of any compulsion from the state." *Abington School District* v. *Schempp*, 374 U.S. 203, 222 (1963).

There is, in short, nothing in the constitutional language or (to use Justice Rutledge's phrase in his strongly separationist dissent in *Everson* v. *Board of Education*, 330 U.S. 1, 33 [1947]) in its "generating history" to warrant a sweeping rule which would invalidate any law that benefits religion or religious groups. Nor is there anything in the language or history of the Religion Clause which denies Congress the power to aid religious schools when it is seeking to aid education in general. Indeed, it should be recalled that the Northwest Ordinance of 1787 (supported by both Madison and Jefferson) declared that, "Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."

In our view, H.R. 16141 permissibly "encourages" parents to choose the type of education which they think best for their children. It preserves the constitutional liberty of parents—recognized since *Meyer* v. *Nebraska*, 262 U.S. 390 (1923), and *Pierce* v. *Society of Sisters*, 268 U.S. 510 (1925)—"to recognize and prepare [their children] for additional obligations" beyond those instilled by the public schools. 268 U.S. at 535; see 262 U.S. at 399–400. It is, in short, not a measure "favoring or preferring" one religion or all religions. Nor does it "tend to foster or discourage religious worship or belief." Rather, it maintains the kind of neutrality on questions of religion that the First Amendment commands.

II

Since the Religion Clause, along with the remainder of the Bill of Rights, speaks in "majestic generalities," and since the precise situations to which it applies in our government-pervasive society were not remotely within the contemplation of the Founding Fathers, it is at least as true here as in any other area of constitutional law (as former Chief Justice Hughes observed) that "the Constitution is what the judges say it is." The Supreme Court's recent decisions on the subject of the Establishment Clause give some indication of the litmus test by which constitutionality may be determined. Under the rules recently applied, a federal tax credit for tuition—even if made refundable—should be held constitutional.

The Establishment decisions over the past decade, from *Engel* v. *Vitale*, 370 U.S. 421 (1962), to *Lemon* v. *Kurtzman*, 403 U.S. 602 (1971), show the evolution of a three-part test. The first two components were articulated by Justice Clark for the majority in *Abington School District* v. *Schempp*, 374 U.S. 203, 222 (1963):

> "The test may be stated as follows: what are the purpose and primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion."

When this test was applied in *Board of Education* v. *Allen*, 392 U.S. 236 (1968), to the loan of secular textbooks to students in public and nonpublic schools, the Court found that the practice passed constitutional muster. By supplying secular teaching materials to private schools—albeit many of the schools were religious in character—the state's purpose was not to aid religion. Nor was the "primary effect" of such a program the advancement of one or all religions.

Chief Justice Burger's opinion in the *Walz* case added to the "primary effect" portion of the constitutional test a new criterion—that of "excessive government entanglement" or "government involvement" with religious institutions. The Chief Justice held that even if there was demonstrably no legislative purpose to aid or inhibit religion, the Court had to "be sure that the end result" was not too much government interrelationship with the churches. 397 U.S. at 674–675.

The "entanglement" standard became a third part of the constitutional test in *Lemon* v. *Kurtzman*, 403 U.S. 602, 612 (1971):

> "Every analysis in this area must begin with consideration of the cumulative criteria developed by the Court over many years. Three such tests may be gleaned from our cases. First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion, [citation omitted]; finally, the statute must not foster "an excessive government entanglement with religion" [citation omitted]."

A tax credit bill such as H.R. 16141 readily satisfies this three-part test:

(1) "*Secular legislative purpose*".—The Supreme Court majority in *Lemon* held that Rhode Island's teacher salary supplement and Pennsylvania's purchase

of school services were designed "to enhance the quality of the secular education in all schools covered by the compulsory attendance laws." 403 U.S. at 613. That finding—on which the Court rested its conclusion that the legislative purpose was secular—is even more compelling as to the present bill. The full bill (including Title I) demonstrates Congress' strong interest in improving the quality of public and nonpublic education throughout the country. That objective—*i.e.*, upgrading the secular education of America's elementary and secondary school population—is plainly within Congress' legitimate range of concern and is a proper subject for the expenditure of "public money" and for the implementation of federal tax policies.

(2) "*Principal or primary effect*".—The *Lemon* Court did not reach the question whether the Pennsylvania or Rhode Island statutes had a proscribed effect because it decided that the "entanglement" standard had been violated. Whatever may be said regarding the primary effect of purchase-of-services from private schools or direct payment of teachers salaries to those employed in private schools, we submit that such plans differ substantially in "primary effect" from a tax credit.

The first and most obvious difference is the identity of the recipient. The institution providing the services that are "purchased" or employing the teachers whose salaries are supplemented is the beneficiary of the governmental expenditure of funds. With a tax credit, on the other hand, it is a taxpayer and not a school who is the "principal or primary" beneficiary. *His* tax bill is reduced, and his funds make their way to the institution only if and when he agrees to pass on all or a part of his tax saving.

In the *Allen* case, as in *Everson* v. *Board of Education*, 330 U.S. 1 (1947), the Court recognized that the availability of a financial benefit to parents may "make it more likely that some children choose to attend a sectarian school." 392 U.S. at 244. But that indirect consequence to the school was not deemed sufficient to invalidate the law under the "primary effect" test.

A second important factor in evaluating "primary effect" is *how* the challenged statute operates. Rather than directly and immediately fostering or sponsoring religion, a tax credit works negatively. It says to a parent that he may obtain some relief from a double tax burden in computing his income tax after the year is over. It does not provide cash in hand as an incentive to enroll in a nonpublic school, but works after the fact.

In evaluating the effect of churches' exemption from property taxes, the Court observed in *Walz* v. *Tax Commission*, 397 U.S. 664, 675 (1970), that a tax exemption does not amount to sponsorship "since the government does not transfer part of its revenue to churches but simply abstains from demanding that the church support the state." The same kind of analysis is appropriate here because a tax credit also does not "transfer revenue;" it "simply abstains" from collecting certain revenue to alleviate a double financial burden.

A third relevant consideration in judging "primary effect" of a law or practice is its even-handedness. In *Epperson* v. *Arkansas*, 393 U.S. 98 (1968), a unanimous Supreme Court invalidated a law which blotted out of the public-school curriculum theories which are in conflict with the Biblical account of creation. Such a law plainly has the "primary effect" of fostering or favoring religion. The tax credit at issue here, on the other hand, is nondiscriminatory as between parents whose children attend sectarian nonpublic schools and those who prefer nonsectarian private schools. And it treats equally all religious denominations.

Moreover, even as between parents of public-school children and those who attend nonpublic schools it cannot be viewed as "sponsorhsip" or "encouragement" of enrollment in private schools. For no parent (even if the tax were made "refundable") is better off financially by sending his child to a private school than if he enrolls in a public school. At best (and these instances will be rare, indeed), his entire private school tuition will be credited against his tax bill—thereby placing him on a parity with the parent of the public-school child. In short, the tax credit—like the exemption in *Walz*—"neither encourages nor discourages participation in religious life." 397 U.S. at 696 (Harlan, J., concurring).

A fourth consideration demonstrating that the "primary effect" of a tax credit would not be the kind of "sponsorship, financial support, and active involvement" which the First Amendment prohibits (*Walz* v. *Tax Commission*, 397 U.S. at 668) relates to its place as part of a federal tax law which now includes—and has long contained—many other provisions which provide tax relief incidentally benefitting churches or religious organizations. In *Lemon* v. *Kurtzman*, 403 U.S. 602, 624-625 (1971), the Court relied, in part, on the fact that the form of aid given by the Pennsylvania and Rhode Island statutes marked "something of an innovation." The "primary effect" of a novel enactment assisting sectarian schools might be to encourage enrollment in such schools in the belief that the state would be assuming increasing responsibility for its finances. The same cannot be said of a tax credit provision added to a law which already provides indirect tax benefits to churches by permitting increased charitable deductions to them (§ 170(b)(1)(A)(i)) and singling them out for other special treatment (*e.g.*, § 508(c)(1)(A), § 512(b)(12)). Exemptions from property taxes have not had the primary effect of aiding or advancing religion because they are accepted by the public as part of our society's desirable accommodation between church and state; the kinds of benefits granted indirectly to churches by provisions of the federal tax law have the same impact, and there is no reason to believe that credits, any more than deductions, would meet with different public response.

These considerations—as well as others that commentators have discussed—refute any suggestion that the *primary* or *principal* effect of this law is to lend assistance "to a church's effort to gain and keep adherents." *Abington School District* v. *Schempp*, 374 U.S. at 228 (Douglas J., concurring). We emphasize, in concluding this portion of our discussion, that a statute must be tested by its *primary* effect, and not by it incidental or consequential impact. This Committee need not—indeed, it should not—ignore the fact that spokesmen for religious schools vigorously support enactment of this bill. But that fact alone, and the fact that their schools are desperately in need of such legislation, does not mean that the entire law's primary impact is aid to religion. Education is aided, and an individual taxpayer who, by reason of his religion, has borne an unfair tax burden is given some relief. Both of these are the *primary* beneficiaries.

(3) "*Excessive government entanglement*".—The Pennsylvania and Rhode Island statutes placed sectarian schools under "comprehensive, discriminating, and continuing state surveillance" (403 U.S. at 619) to insure that public funds were not being spent for religious purposes. This amounted to "excessive and enduring entanglement" which, according to the Court, invalidated the statutes. *Ibid.*

H.R. 16141 obviously presents no such danger. The Federal government is required to do little more in administering the tax credit provision that it does now in administering Section 170, which provides for charitable deductions, and Section 501, which exempts charitable corporations from taxation. There is no supervision of any internal operation, no review of how teachers teach or what materials are used. As was true *in Tilton* v. *Richardson*, 403 U.S. 672, 688 (1971), the relationship of religious institutions with government is "narrow and limited" because "[t]here are no continuing financial relationships or dependencies, no annual audits, and no government analysis of an institution's expenditures on secular as distinguished from religious activities."

III

We have demonstrated above that H.R. 16141 would pass the three hurdles which stand between it and a judicial finding of constitutionality under the First Amendment. Another argument in its favor, not yet fully explicated in judicial decisions, is the fact that if enacted by Congress, it will reflect a considered legislative judgment of the proper balance between the demands of the Free Exercise Clause of the First Amendment and the inhibitions of its Establishment Clause.

In *Walz* v. *Tax Commission*, 397 U.S. 664, 669 (1970), the Court noted that the "course of constitutional neutrality in this area cannot be an absolutely straight line" and that "there is room for play in the joints productive of a benevolent neutrality which will permit religious exercise to exist without sponsorship and without interference." The spiraling costs of education in a modern world have made it realistically and practically impossible for private schools to survive without obtaining financial assistance from sources other than parents and voluntary contributors. If, given this situation, Congress fails to provide some tax relief for parents, the Free Exercise right to send one's child to a religious school will lose all meaning.

A tax credit in the context of H.R. 16141 fairly and reasonably "traverses the 'tightrope' " described by the Court in *Walz*. 397 U.S. at 672. The consideration by Congress of many countervailing factors in deciding whether to take that course is similar to the exercise undertaken in enacting the American-flag literacy provision challenged in *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966). In that case, the Supreme Court upheld legislation based upon "various conflicting considerations" on a determination that there was "a basis upon which the Congress might resolve the conflict as it did." 384 U.S. at 653. The same principle will be applicable here if H.R. 16141 is enacted and is ever tested in the courts.

The major argument that has been asserted against the constitutionality of the tuition tax credit is that it does not differ, in actual economic effect, from an outright tuition grant to parents in the amount of the credit and that it should, therefore be judged for constitutional purposes as the equivalent of a payment out of the public treasury. Of course, the constitutionality of tuition grants is presently in issue and we believe for many of the reasons spelled out here that they are constitutional. However, whatever may be the fate of tuition grants, the contention that they are identical to credits is unsound factually and in constitutional theory.

Its factual premises are weak because there is a real difference in effect on individuals between a tuition grant paid before, at, or shortly after the time of tuition payment to a nonpublic school and a government promise of a credit against a tax obligation the following April. Since the constitutional test is whether the government activity fosters or encourages religious observance, it is relevant to note operative distinctions which affect the degree of encouragement provided by a particular practice. It is subsequently less probable, in other words, that an individual will be encouraged to send his child to a private school by the assurance that he will get a tax credit the following year than by a grant of money (or a "voucher") available to him at the time his tuition payment is due.

Another substantial difference between a tuition grant or voucher and a tax credit is the greater uncertainty as to the latter's conversion into an economic benefit to the school.

Opponents of H.R. 16141 have asserted that taxpayers will be no more than "conduits" of the amount of the tax credit and that private schools will immediately increase their tuitions. This presupposes acquiescence and compliance by all parents—hardly a realistic assumption. A private school may increase its tuition, but that increase is meaningless unless parents agree to pay it. So long as parents may choose where they send their children, they are free to transfer to other schools where tuition is lower and where they may personally benefit from more—or possibly all—of the tax credit. That possibility does not exist, of course, with a voucher plan.

A third factual distinction concerns the low-income parents who have no tax liability, or whose liability is less than their allowable credit. As H.R. 16141 presently stands, it affords neither the taxpayer nor the school any financial benefit on account of that enrollment. While we believe that a refundable credit would be constitutionally permissible for substantially the same reasons as we have previously given in support of the credit, we recognize that a refund in these circumstances might be subject to greater constitutional challenge than the credit standing alone. Conversely, a refundable credit is a reasonable means of providing for the low-income taxpayer some small opportunity to secure a similar education for his child as those who are more fortunate. Congress does, of course, have the power to establish a tax structure that compensates for the unequal distribution of wealth; the progressive income-tax rates are proof enough of that. A refundable credit is, in this context, simply a form of socal welfare legislation and, with this added factor in the balance, even a payment from the public treasury should be deemed a rational adjustment of "various conflicting considerations." *Katzenbach* v. *Morgan*, 384 U.S. 641, 653 (1966).

While we reccomend, in this regard, that the credit be made refundable, we also urge that a severability provision be added to Title II and that the legislative history make it clear that if the credit may constitutionally be retained without the refund provision, it is Congress' wish to retain it. This should result in favorable judicial action even if a portion of the law is found invalid. *E.g.*, *Watson* v. *Buck*, 313 U.S. 387 (1941); *Electric Bond & Share Co.* v. *SEC*, 303 U.S. 419, 434–435 (1938).

Finally, we believe that the proposition that tax credits must be treated like tuition grants is unsound as a matter of constitutional theory. In the final analysis, the *form* that government action takes in the field of religion is not irrelevant. An almost-unanimous Supreme Court, sustaining the property exemption for churches in *Walz* v. *Tax Commission*, 397 U.S. 664, 675 (1970), indicated that a transfer of government revenue is different from a governmental decision not to tax. Plainly, the economic impact of a transfer and an abstention may be identical . Yet a transfer of government funds might be viewed as "sponsorship" and a failure to tax merely "separation."

There are really two differences of form which may have constitutional implications between a tuition grant or voucher and a tax credit. The first pertains to the tax structure. Obviously Congress often carriers out policies or encourages conduct by tax incentives even though it could not command such conduct directly. Marriage is encouraged, for example, by special rates for taxpayers filing joint returns, although it would hardly be within Congress' prerogative to provide cash bonuses for all newlyweds. Home purchases are encouraged by existing deductions for interest and local real estate taxes, but homeowners could hardly be paid a federal bounty for buying a house. These and other illustrations that come to mind demonstrate that Congress may constitutionally do with the tax structure what it could not do directly.

A second distinction of form relates to the negative or "abstention" aspect of a credit. By permitting the taxpayer to retain the amount he has paid as tuition (not to exceed the statutory maximum), Congress has, in effect, withdrawn its power to collect taxes from such portion of the taxpayer's assets as he has used to pay for the education he could have obtained free at a public school. The withdrawal here—like that in *Walz* (397 U.S. at 675)—is different from an affirmative grant directly to a school which puts the school "on the public payroll." Congress may, in other words, constitutionally achieve certain results by withholding its taxing powers and refusing to collect a certain tax even if that same result could not be achieved by affirmative means.

Mr. ZYLSTRA. I might say this, too, that the final report of the President's panel entitled "Nonpublic Education and the Public Good" does have a tremendous amount of information in it and is supported by additional research. I would like to submit that.

The committee would probably be very interested in receiving copies of this report which covers some of the items such as Congressman Carey mentioned earlier, transfer costs to public school from the nonpublic schools, and so forth. But we will, as an organization, have materials prepared for the committee on the constitutional aspects of tax credit as we had received it from our panel research.

Mr. GIBBONS. Could we get that put in the record at this point?

The CHAIRMAN. Permission has already been give for that.

Mr. BROTZMAN. I think it would be up to the discretion of the chairman as to how voluminous a document like this should be, but I do sincerely feel that this does need to be a part of the record. I know that this problem is going to surface, and there will be debate on the floor on each particular point in the legislative progress.

(The report referred to follows:)

NONPUBLIC EDUCATION AND THE PUBLIC GOOD

THE PRESIDENT'S PANEL ON NONPUBLIC EDUCATION

FINAL REPORT

The President's Commission on School Finance

President's Commission on School Finance

1016 Sixteenth Street, N.W., Washington, D.C. 20036 (202) 382-1646

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EXECUTIVE DIRECTOR
Norman Karsh

April 14, 1972

The President
The White House
Washington, D. C. 20500

Dear Mr. President:

On March 3, 1972 your Commission on School Finance submitted to you its Final Report, covering the aspects of our study which were required by Executive Order 11513, dated March 3, 1970.

Within the Commission you appointed a four-member Panel on Nonpublic Education with directions to report to you on matters of special concern to the Nation's nonpublic elementary and secondary schools.

The Report of the Panel on Nonpublic Education is submitted herewith. In reading this report, it is important to recognize that it represents the views of the Panel members and that it has been neither reviewed nor approved by the Commission as a whole.

Respectfully submitted,

Neil H. McElroy

President's Panel on Nonpublic Education

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April 14, 1972

The President
The White House
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Dear Mr. President:

I have the honor to submit to you the final report of the President's Panel on Nonpublic Education which you established on April 21, 1970. Throughout its deliberations the Panel has kept uppermost in mind your request for recommendations "that will be in the interest of our entire educational system."

Our findings confirm your initial assessment of the nonpublic school situation: enrollments are falling and costs are climbing. The trends, however, are neither inexorable nor inevitable if certain initiatives are undertaken. We have sought to discover reasons for, and implications of, enrollment losses. While the causes are multiple, interrelated, and difficult to isolate, the implications are clear. If decline continues, pluralism in education will cease, parental options will virtually terminate, and public schools will have to absorb millions of American students. The greatest impact will be on some seven of our most populous States and on large urban centers, with especially grievous consequences for poor and lower middle-class families in racially changing neighborhoods where the nearby nonpublic school is an indispensable stabilizing factor.

The social and economic costs to the Nation are too high to bear when compared to the lesser costs for effective public intervention. The Panel, therefore, makes these four major recommendations:

(1) A Federal Assistance Program for the urban poor through a four-pronged approach which includes: (a) reimbursement allowances to welfare families for expenses connected with sending their children to nonpublic schools as well as supplemental income payments to the working poor for this same purpose, (b) experimentation with voucher plans for parents of inner-city school children, (c) strict enforcement of the Elementary and Secondary School Education Act so all children receive the full benefits to which they are entitled, and (d) adoption of a Commission on School Finance recommendation for an urban education assistance program to provide interim emergency funds on a matching basis to large central-city public and nonpublic schools;

(2) Federal income tax credits to parents for a portion of nonpublic school tuition expenditures;

(3) A Federal construction loan program;

(4) Tuition reimbursements on a per capita allocation formula in any future Federal aid program for education.

Because the crisis is most acutely felt by church-related schools, notably Roman Catholic, the Panel has given serious attention to the constitutional issue. It is persuaded that although direct aid to nonpublic schools is prohibited, aid to parents and to children will pass judicial muster. Anticipating that such recommendations may provoke a debate of significance to all American education, the Panel presents criteria which, hopefully, will prove germane and useful.

But the recommendations have not sought to evoke public response only. Much can be done by the nonpublic school community to help itself. Concrete suggestions, which can be adjusted to the needs of different nonpublic schools, have also been made. Conscious of the great needs in the public sector, the Panel has acted on the premise that while nonpublic schools need and deserve outside help, large efforts of self-help are also required. A private voluntary enterprise (a waning aspect in American life) must retain substantial responsibility for its own affairs, lest it become private and voluntary in name only.

One final note: the next few years are critical to the future of pluralism in education. Whatever is done must be undertaken with a profound sense of urgency.

Respectfully submitted,

Clarence C Walton

Clarence C. Walton, Chairman

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CHAPTER I

PROLOGUE: MANDATE AND BELIEFS

THE NATURE OF THE MANDATE set before the President's Panel on Nonpublic Education as well as the Panel's related beliefs must be clear from the outset. For this reason the Panel immediately addresses itself to a clarification of these aspects.

A. The Mandate

The President's Panel on Nonpublic Education came into existence on April 21, 1970, when President Richard Nixon established this four-member group and charged it to do three things:

1. To study and evaluate the problems concerning nonpublic schools;
2. To report the nature of the crisis confronting nonpublic schools;
3. To make positive recommendations to the President for action which will be in the interest of our entire national educational system.

The Presidential mandate, therefore, directed the Panel's investigations into the formally structured programs carried on by schools. In its deliberations, however, the Panel became keenly aware of an important and sometimes overlooked fact: **While schooling is education, education is more than schooling.**

Research findings which deal with early childhood learning may turn out to be more significant than evaluations of present structures. Small illustrations signal large issues. The fact that eighteen-month olds reveal little difference in learning capacity and three-year olds exhibit sharp differentials tells us how much more we need to know about this critical and relatively short time span of early life. Little is known of and less is done with ways to help parents understand and fulfill their teaching role in the infant's life, to encourage families to help other families with the very young, to spur churches to go beyond ritualistic preparations for baptisms, confirmations, or bar mizvahs in their relationships to the child, and to deploy public resources so effectively that teachers interact more constructively in the parent-child relationships.

In a more enlightened day, we shall learn how to respond more innovatively to the coming of a new and precious resource, the newborn child. For the present, however, it is important to remember that the Panel's charge was to focus upon the child **after** he has entered the formal schooling process. And even within this time frame and within this institutional setting are enough complexities to excite the energies of all and chasten the ambitions of most.

A proper response to the President requires answers to seven important questions:

1. **What is meant by nonpublic schools?**
2. **What positive features and what forces make their preservation a desirable and an achievable objective?**
3. **What negative factors severely jeopardize their future?**
4. **What are the added costs, economic and cultural, to the American public if nonpublic schools decline and deteriorate?**
5. **What should government do in a constitutionally acceptable and economically viable way to help nonpublic schools?**
6. **What should the nonpublic school community do for itself?**
7. **What criteria are most relevant when Americans engage in the debate on the future of American education?**

Answers to these questions are governed by facts and conditioned by beliefs. How the Panel's conclusions have been affected by its basic philosophy may be best perceived through a straightforward statement of its own credo.

B. Basic Beliefs

When a child is born, one cycle in the miracle of human love and human need ends. Another begins. The new cycle involves questioning and answering. Because the infant is totally dependent, it becomes the task of others to answer by word and deed the two most profound questions any society faces:

What is a *human* being?
What is *being human?*

The first query relates to fact: someone exists; the second relates to fulfillment: existence is growth. Growth requires nurture and direction, which are, in turn, the basic ingredients of the learning process.

From such elementary observation emerge profound implications dealing with the sanctity of individual life, the inviolability of each person, the child's dependency on others for fulfillment, the primacy of the parental role, the necessary supportive involvement of society through its school systems, the large uncertainties on how growth and maturity are best achieved. Because various people read these implications in different ways, a summary of our convictions is appropriate. Our credo is easy to state, noble to contemplate, difficult to realize.

We believe that when parents send offspring to school, a unique kind of contract comes into being. Parents, literally and figuratively, ask the teacher: "Will you help our child learn?" They invite someone outside the family to participate in the quasi-mystical, highly intimate, and deeply reverent enterprise of launching a human being into the *"being human"* stream. Long before the child reaches adulthood, millions upon millions of stimuli (books and people, sights and sounds, tastes and touches) will pound and batter the youth. It is the teacher's function to help sort out and transmit proper signals; it is the teacher's role to share in the parental responsibility. Home and school unite in a sacred trust!

We believe nonpublic schools, in their variety and diversity, offer important alternatives to state-run schools. It is conceivable that in years to come a larger degree of diversity will become characteristic of the public school system. But until public schools offer wider alternatives, it is not only legal but right that nonpublic options be available. Whether these nonpublic schools be rich or poor, traditional or experimental, boarding or day, church-related or not, they have been, are, and should continue to be important parts of the varied American educational scene.

We believe that men do not live by knowledge alone. They also live by a set of human values—ethical, moral, and religious. The nonpublic schools consciously seek to explore the utmost reaches of these values and to inculcate in the young a respect for them. The secular underpinning for these values is found in the seedbeds of Greco-Roman civilization; the spiritual base rests chiefly on a Judeo-Christian religious tradition. The resulting amalgam constitutes our democratic and American values. Some two centuries have not eroded the importance of what a 1781 charter of a nonpublic school said so well:

> Goodness without knowledge is weak and feeble; knowledge without goodness is dangerous. Both combined form the noblest character and lay the surest foundation of usefulness to mankind.[1]

We believe a major purpose of education is to increase the individual's capacity for the generous enjoyment of life and the generous sharing of his gifts; consequently, there must be realistic choice—choice of job, choice of church, choice of neighborhood, choice of school. Nonpublic school supporters, while understanding the tremendous burdens placed on public schools, must continue to offer a varied educational experience, use their freedom wisely, merit their tax-free status, and earn a just measure of public support. They must beware of frills, be willing to "make-do," and be eager to cooperate at every possible opportunity with other schools.

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[1] John Phillips, 1781.

We believe that the true vision is not of schools, but rather of the individual child for whose growth the school shares responsibility with parents, church, and community. Nonpublic schools accept this vision, and their record shows a continuing concern for the education of enterprising, creative, and compassionate human beings—a resource on which the future of the Nation depends. It matters little that their numbers are small, but it matters ever so much that their quality is high, their contributions distinctive, their clients committed. They must not only survive; they must flourish.

We believe that, as they flourish, they must ceaselessly remind their patrons to do everything possible to assist the public schools which themselves confront serious problems. The following quotation from a nonpublic school principal's letter to parents of his students illustrates a point the Panel wholeheartedly endorses:

> While you pay tuition at this school, you also pay taxes for the support of your public schools. But paying taxes is not enough. Parents of children in private schools owe concern and time to the tax-supported schools. We are independent of many of the pressures to which they are subjected, and we must use whatever influence we have to support them in their monumental task.[2]

The Panel's premise is clear: there is an interlocking set of relationships between all schools, and failure to recognize this elementary fact can only resurrect or perpetuate narrow partisanships which ill serve the Nation's children.

It is from these philosophical perspectives that we judge. It is for others to determine whether such perspectives make sense, and if they do make sense, to help translate them into reality.

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[2] Phillips Exeter, 1952.

CHAPTER II

THE NONPUBLIC SCHOOLS: A NATIONAL ASSET

A BRIEF DESCRIPTION OF NONPUBLIC SCHOOLS as revealed in their variety, their current status, and their future will serve as a helpful background for this study.

A. Varied Enterprise

While it is commonplace to divide nonpublic schools into two basic types—independent and church-related—generalizations about them, even when so classified, can be dangerously misleading. Some are young institutions struggling for survival, and others are venerable institutions with origins dating to early colonial days; some offer revolutionary new curricula, while others are content with traditional approaches; some are in great demand, while others face a threatening future.

The ten percent of total enrollment now included in nonpublic schools does not suggest, at first blush, any considerable figure, but this percentage represents 5,282,567 students. This number exceeds by nearly 650,000 pupils the total public school enrollment in the Nation's largest State (California) and surpasses by 1,800,000 pupils New York's total public school enrollment. It is indeed a very substantial enterprise.

During the seventeenth and eighteenth centuries nonpublic schools were chiefly small academies, seminaries, or dame schools. Beginning in the nineteenth century and continuing into the twentieth, increasing numbers have been church-related. Some 3,200 independent schools now range in kind from kindergartens to military schools, from boarding (boys, girls, and coeducational) to country day schools, from traditional and highly structured schools to freedom schools characterized by innovation. Some recent additions, like the Street Academies and the Harlem Preparatory School, have sprung up to meet minority needs and aspirations.

Far more numerous than the independents are the church-related institutions, Catholic, Protestant, and Jewish. There are over 18,600 such establishments, the largest of which is Roman Catholic, whose 12,000 schools enroll 4.37 million pupils, constituting eighty-three percent of the total nonpublic school membership.

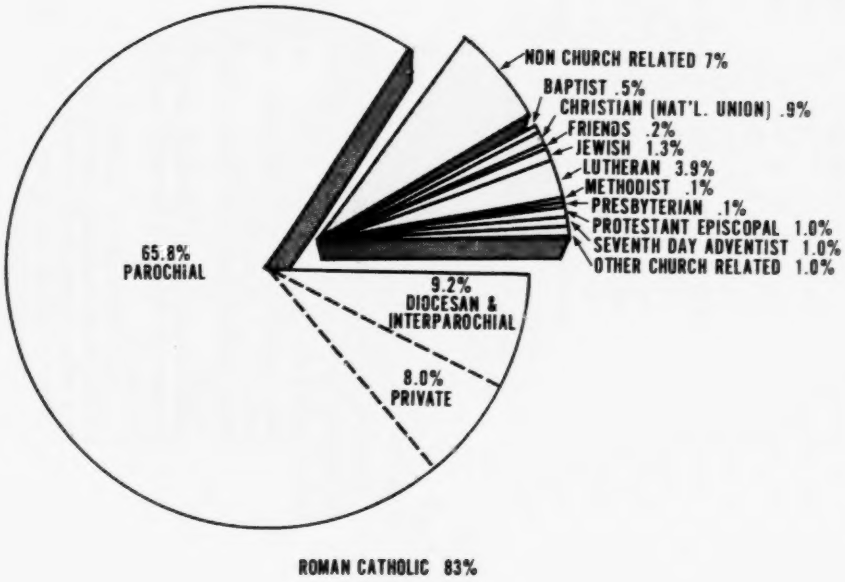
The long history and multiple types of nonpublic schools make several things clear: variety is as stimulating for education as for other spheres; freedom to form such schools is highly esteemed; and alternatives to public education are encouraged. By and large, the support base does not rest on people of wealth but on working families who have paid taxes to sustain public schools and who have paid tuitions to nonpublic schools because they have seen in them the kind of institutions best suited to their children's needs.

B. Current Status

From research, recorded testimony, and distillations of its own experiences, the Panel defines the present status of these schools in the following terms:

1. The enormous potential of parent power is effectively harnessed.
2. Their teachers and students play a large part in decision-making.
3. Many are committed to experimentation.
4. Independent study and individual attention to students hold high priority.
5. Special opportunities for improved education of American Indians, Black Americans, Spanish-speaking Americans, and other ethnic groups are being furthered. They will continue to offer the children of both new and old Americans an opportunity to be educated as patriotic citizens, while, at the same time, they maintain a link with the rich heritage that is uniquely theirs.
6. Many free or community schools are working toward the kinds of life style and education that parents and their children increasingly seek. Respect for the whole person and for warm interpersonal relationships is a factor of increasing importance.
7. Most people no longer see nonpublic schools as a divisive force or as a threat to the public schools, but rather as an integral part of American education, as partners with public schools, and as a necessary witness to the values of voluntarism, pluralism, and diversity in American education. This attitude becomes more evident in considering the following items:
    - A Gallup survey put the following question to a representative sample of the American public: "As you know, there is talk about taking open land and building new cities in this country. New cities, of course, would include

Nonpublic School Enrollment Distribution



people of all religions and races. If such communities are built, should there be parochial and private schools in addition to public schools?" Seventy-two percent responded yes, twenty-three percent no, and five percent no answer. Respondents in areas where there are both public and parochial schools answered eighty-four percent yes, twelve percent no, and four percent no answer.[1]

- Recent research has confirmed the Greeley-Rossi [2] findings that Catholic schools, the largest segment of the nonpublic school sector, are not a divisive force and would be so regarded only by those few who still dream about a melting-pot kind of American society at a time when sociologists are saying that cultural pluralism urges the conscious encouragement of ethnic and religious diversity. Moreover, our research indicates there is room to argue that the freedom to maintain the distinctiveness that major segments of the population desire defuses disruptive impulses.
- Research shows that public and nonpublic schools' cooperative plans and programs have received solid support from parents of children in both kinds of schools.

8. Public policy generally favors continuance of nonpublic schools. The executive, legislative, and judicial branches have spoken:
   - The President of the United States has declared nonpublic schools "provide a diversity which our educational system would otherwise lack." [3]
   - Acknowledging that nonpublic schools serve a public purpose, the Congress and several States have enacted laws for the benefit of nonpublic school pupils.
   - The United States Supreme Court, in the *Allen* [4] textbook decision, noted that legislative findings and court decisions have recognized that "private education has played and is playing a significant and valuable role in raising national levels of knowledge, competence, and experience. . . . Considering this attitude, the continued willingness to rely on private school systems strongly suggests that a wide segment of informed opinion, legislative and otherwise, has found that these schools do an acceptable job of providing secular education to their students." In the *Lemon* [5]–*DiCenso* [6] decisions, the Court did not reverse its findings in *Allen,* but only outlawed the Pennsylvania and Rhode Island patterns of aid to church-related schools (not necessarily to all nonpublic schools) because they involved the Court's conception of illegal "entanglement" of Church and State.

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[1] "How the Public Views Nonpublic Schools," 1969.

[2] Andrew W. Greeley and Peter F. Rossi. *The Education of Catholic Americans* (Chicago: Aldine Publishing Co., 1966.)

[3] President Richard M. Nixon, "Message on Education Reform," March, 1970.

[4] *Board of Education* v. *Allen,* 392 U.S. 236, 243 (1968).

[5] *Lemon* v. *Kurtzman,* 398 U.S. 569, 570 (1971).

[6] *Early* v. *DiCenso,* 398 U.S. 89 (1971).

9. Nonpublic schools are rendering meritorious service in inner-city areas where their continuance is crucially needed for the education of economically disadvantaged children. For this the following investigations offer buttressing data:
    - A research study in Michigan has revealed that there is "more evidence of equality of opportunity in the church-related than in the public schools." In terms of "educational advantages," a child in a "low status" community is "better off in church-related schools than in public schools." [7]
    - A comparable study in Chicago produced evidence that Catholic schools "were not, as had been charged, filtering off the most intelligent students in each area and leaving the dregs in the public schools. In fact, the Catholic school IQs fell farther behind the public school IQs in poor neighborhoods than in wealthy neighborhoods." Catholic school pupils' achievement was equal or superior to that of comparable public school pupils where "per pupil cost was only 59.8 percent as high as the public school expenditure level."
    - In Chicago, "dollar outlays for instruction by the Catholic schools were more evenly distributed across neighborhoods of varying wealth than was the case with the public schools." It was also reported that "public schools were benefiting wealthy and white communities more than poor and Black communities, while the Catholic schools were benefiting poor and Black communities more than wealthy and white communities."
10. The national mood favors voluntarism in education. This assertion is made in light of these considerations:
    - A nonpublic school is a voluntary enterprise. It begins when a community of people decides to make a private investment in nonpublic education. It continues as long as the community maintains its support. It goes out of business when its backers withdraw their support.
    - The American investment of private funds in nonpublic schools is unparalleled in any other nation of the world. For example, in the Chicago Archdiocesan school system, parents of about 20,000 eighth graders enrolled for next September's Catholic high school freshman class pledged to spend in excess of $32 million for their children's secondary education over a four-year period. That kind of investment in private education is unheard of beyond the borders of our Nation.
    - There is a strong sentiment developing in favor of options, for example, the choice of one of several public schools within a system or the choice of a public or nonpublic school by way of a voucher plan. It would be utterly cynical to presume that all this interest in options

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[7] All quotations in item 9 are taken from Donald A. Erickson and George F. Madaus, *Issues of Aid to Nonpublic Schools, Summary Analysis:* Center for Field Research and School Services, Boston College, Boston, Mass., September 17, 1971.

is motivated only by racial considerations though, unfortunately, racial prejudice of one kind or another is effectively holding up general plans for options based entirely on educational considerations.

C. A Posture for Confidence

In addition to the positive aspects recorded above, there are other grounds for optimism. Because 1971 brought Supreme Court decisions that created considerable disappointment among nonpublic school adherents, there is a tendency to view the recent past as one of unrelieved gloom. A broader perspective leads to different assessments. In point of fact, the year brought these five quite remarkable developments which will be discussed individually:

1. The *Serrano*[8] decision in California (August 30, 1971);
2. The Washington Seminar for Nonpublic School Leaders (May 19–20, 1971);
3. Response by the U.S. Office of Education to a Panel recommendation of February 12, 1971;
4. The Airlie House Conference in Virginia (November 15–17, 1971);
5. The statement of the President's Commission on School Finance (March 6, 1972).

1. The Serrano Decision

The *Serrano* decision is of more than casual interest. Handed down on August 30, 1971, by the Supreme Court of California, the ruling declared that the State's funding system, with its heavy reliance on local property taxes, generated excessive variations of expenditures per pupil among districts. Californians were being classified according to wealth; and classification by wealth, said the Court, is intolerable when it interferes with the "fundamental" interests of individuals. Education is a fundamental interest.

The Panel, impressed by the Court's high sensitivity to the concept of equity, asserts its dedication to the same high ideal and feels that *Serrano* (plus subsequent decisions in Minnesota, Texas, Arizona, and New Jersey) signals important advances in asserting the rights of all children to a fair share of tax resources.

Related to *Serrano* is a Texas ruling by a panel of three Federal judges. The Edgewood Texas School District (with a poor and predominantly Mexican-American population) had a per pupil expenditure of less than $300, as contrasted with $5,334 for the richest Texas district. As the *New York Times* editorialized on December 25, 1971, "When the difference in financial support is almost 2,000 percent, the result is a Tale of Two Schools that makes a mockery of equal protection." The Panel's concern with the right of every child to equal opportunity and equal protection of the laws under the Fourteenth Amendment explains its interest in—and approval of—the equity principle expounded in these decisions.

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[8] *Serrano* v. *Priest*, (Cal. App.) 89 Cal. Rptr. 345 (1971).

2. The Washington Seminar for Nonpublic School Leaders

Another positive note was the immediate and affirmative response to a recommendation made by the Panel, in its first interim report (February 12, 1971), that there be held a high-level meeting in Washington to review the nonpublic school crisis in all its dimensions. As a result, forty-four leaders, representing five million youngsters enrolled in nonpublic schools, gathered in Washington on May 19–20, 1971.

The Panel shared in these historic discussions out of which emerged a decision to form a new organization called the Council for American Private Education. CAPE, as it is familiarly known, is a fledgling organization whose potential is yet to be realized. To its credit, it has already undertaken serious efforts to eliminate the insulation which has existed heretofore among components of nonpublic school systems; and its charter incorporates a philosophy of cooperative relationships with major public school organizations, such as the National Education Association. Its determination to tell the story of nonpublic education is commendable.

The Panel judges these to be important steps. It renders this judgment because any review of school history demonstrates that internecine rivalries—often petty and parochial in nature—have worked to the detriment of children. The widely held and misguided philosophy that what was done for one system must invariably hurt the other will crumble only as common efforts are made to enlist the support of all people at this critical time in American education. CAPE's founding requires CAPE's funding, and the Panel urges its financial support to major foundations and sponsors of nonpublic schools.

3. The USOE Bridge

One of the Panel's first recommendations called for creation of a new structure within the U.S. Office of Education "to deal directly with nonpublic schools and to make effective recommendations to top officials in the Department of Health, Education, and Welfare." The Panel was led to this view by testimony that the nonpublic sector was virtually ignored by public officials: data were inadequate, liaison almost nonexistent, distrust evident. It was the view of Commissioner Sidney Marland that the proposed reorganization might prove dysfunctional and that the proper response was rather a broadening of the Department's vision to embrace the entire educational system, including the previously neglected nonpublic sector. To that end, a coordinator for nonpublic educational services has been named to provide a direct link between the Office of Education and nonpublic schools.

This response is reasonable, and time must be allowed to demonstrate its value. Appraisal should be undertaken and publicly reported no later than December, 1974.

4. The Airlie House Conference

The U.S. Office of Education sponsored a historic meeting at Airlie House in Virginia on November 15–17, 1971, which brought together approximately seventy educational leaders: over thirty superintendents from large urban public school systems and their nonpublic school counterparts. No such meeting had been undertaken previously. It was encouraging to note that common concerns for quality education permeate the leadership of both the public and nonpublic schools. Even in a group discussion on financing public and nonpublic education which produced the most spirited and most divergent views, the conference summary recorded these telling points: [9]

a. Plural school systems are generally favored by everyone.

b. The problems of public and nonpublic city schools are much the same, that is, eroding tax base and flight to the suburbs.

c. There is some evidence that funding and providing services to nonpublic schools help support public education. The more people involved, the broader will be the support of all education.

d. Nonpublic schools would be willing to submit to reasonable regulations if they use public funds.

e. To help solve urban problems, a new coalition of superintendents, mayors, and union leaders needs to be formed.

The U.S. Office of Education is to be commended for this effort, and the Panel recommends the sponsoring of similar conferences. Initially, meetings of this sort cannot be expected to produce blueprints for action, but they can go a long way toward providing an atmosphere for constructive cooperation.

5. The Report of the President's Commission on School Finance

In its final report the President's Commission on School Finance adopted the following positions:

a. *The Commission recommends that local, State, and Federal funds be used to provide, where constitutionally permissible, public benefits for nonpublic school children, e.g., nutritional services such as breakfast and lunch, health services and examinations, transportation to and from schools, loans of publicly owned textbooks and library resources, psychological testing, therapeutic and remedial services, and other allowable "child benefit" services.*

b. Aware that the provision of child benefit services alone will not make a substantial contribution toward the solution of the nonpublic schools' financial crisis, *the Commission further recommends that governmental agencies promptly and seriously consider additional and more substantive forms of assistance, e.g., (1) tax credits, (2) tax deductions for tuition, (3) tuition reimbursement, (4) scholarship aid based on need,*

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[9] USOE: *Conference Summary, 1971.*

and (5) equitable sharing in any new federally supported assistance programs.

c. Evidence is inconclusive in regard to the amount of program participation that nonpublic school children are receiving under Federal education programs for which they are legally entitled. The Commission urges that the Federal Government take action to guarantee to nonpublic school children equitable participation in all Federal programs for which they are eligible. Though these programs would continue to be administered through public school systems, such action would insure that all eligible children attending nonpublic schools participate in federally aided programs.

Neither rhetorical flourish nor desire for self-fulfilling prophecy prompts the Panel to welcome the Commission recommendations as historic ones. The fact speaks for itself. When the Commission began its deliberations, it was difficult for the Panel to anticipate that such support would have been achieved on these delicate points. The action has been taken. The recommendations are going forward to the President and to the Congress. The points for well-tempered optimism are solid. The possibility of imaginative and constructive action now lies before us.

CHAPTER III

THE PUBLIC PRICE FOR PRIVATE FAILURE

LIKE OTHER SIGNIFICANT VOLUNTARY ENTERPRISES in America, nonpublic schools came into being to fill an important need not met by a public agency. They operate under the constant and pervasive challenge of the market: if they fail to measure up to client expectations or if a public agency better serves the purpose, they cease to exist.

But education is not a genuinely free market because the public sector holds a preponderant position which is buttressed by over $45 billion of tax money. If a difference in the resource base makes the existence of nonpublic schools precarious, the situation is rendered more vulnerable because winds of change are sweeping every major contemporary institution. Nonpublic schools feel the full constraint of, but do not enjoy the full benefit of, the market system.

A Rand Corporation report to the Commission noted that the public school establishments of large cities exhibit an incapacity to adjust and that outside pressures are required for innovation. Despite this alleged inability to respond effectively, public school enrollments have increased twelve percent since 1965, while nonpublic enrollments have decreased by twenty-three percent. Possibly a paradox is in the making. It is clear, however, that the public interest is related to the all-important question: **if nonpublic schools do not survive, what consequences follow for public schools and for American society?** Three major conclusions must be considered in rendering a proper answer.

A. Public schools least able to accommodate additional pupils would be the ones generally hardest hit by the tide of transfers.

B. Municipalities, already heavily burdened with rising taxes for projected public education needs, would confront militant demands for even higher tax rates to sustain crowded public schools.

C. Social costs may prove to be even higher than economic ones. For larger cities, closing nonpublic schools would have marked impact on housing patterns, unemployment ratios, and racial stability.

1. *Housing patterns* are altered because people with sufficient money flee from overcrowded schools and leave the poor to endure deteriorating neighborhoods and schools.
2. *Unemployment ratios* between rich and poor, black and white become further distorted because overcrowded schools have a higher proportion of dropouts.
3. *Racial stability* is most threatened where most needed because neighborhood nonpublic schools are frequently the major reason for holding whites in the area.

Prudent policy-making requires analyses of major possible alternatives. If the accepted hypothesis is wholesale closing of nonpublic schools, analysis of State and urban enrollment patterns, respectively, reveals important conclusions. Modifications of estimates obviously qualify the conclusion, and the following analysis draws heavily on research authorized by the President's Commission on School Finance.

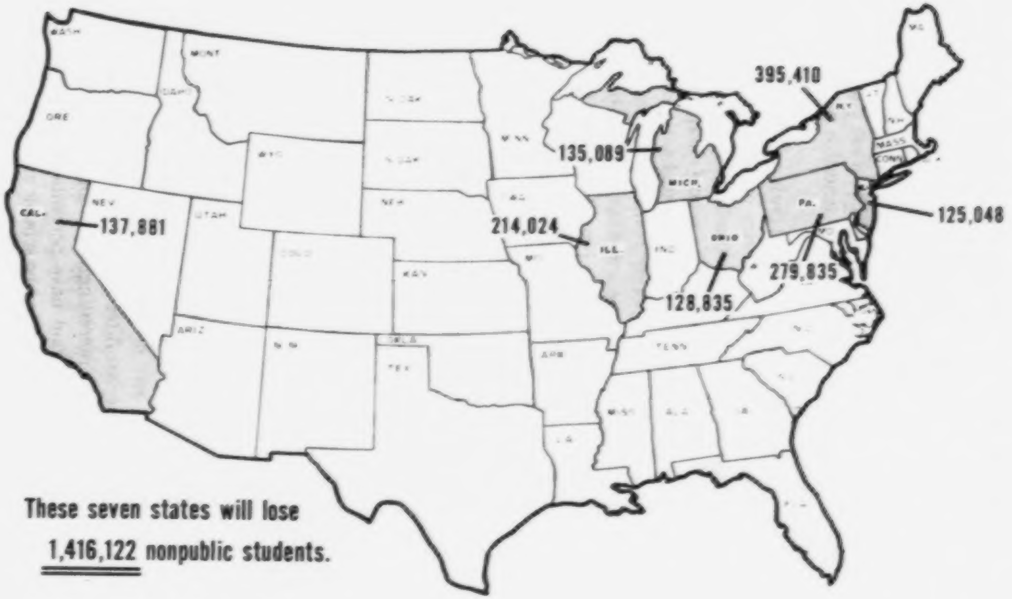
A. State Nonpublic Enrollment Patterns

Nonpublic enrollments are concentrated in New York (789,110), Pennsylvania (518,435), Illinois (451,724), California (398,981), Ohio (339,435), New Jersey (298,548), Michigan (264,089), and Massachusetts (205,011). These eight industrialized and urbanized States are heavily encumbered by costly public services, with serious financial crises a distinct possibility. Disquieting signs are already appearing, such as extended public school holidays in Ohio because of negative school levy votes, Pennsylvania's fiscal brinkmanship prior to recent tax legislation, and staggering budget demands on California and New York.

Michigan is a dramatic case in point. Aware that its nonpublic schools (which in 1970 enrolled 287,000 pupils, or some fourteen percent of the State's school-age children) were in financial trouble, the legislature passed a bill authorizing use of tax funds for partial payment of the salaries of lay teachers in Michigan's nonpublic schools. The amount authorized for this purpose was limited to two percent of the total State outlay for education. In effect, the law brought aid to nonpublic school pupils at an annual rate of about $130 per pupil, much less than the annual rate of $843 per public school pupil.

In November, 1970, the Michigan plan was overturned by voter approval of a constitutional amendment. Subsequent court action sustained the voters' veto. Repercussions from Michigan were felt across the Nation. Word reached the Panel that some nonpublic

Projected Concentration of Nonpublic Enrollment Losses
1970 to 1980


395,410
135,089
125,048
214,024
137,881
279,835
128,835
WASH
ORE
CAL.
NEV
MONT
IDAHO
WYO
UTAH
COLO
ARIZ
N.M.
N.DAK
S.DAK
NEB
KAN
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MINN
IA
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IND
MICH.
OHIO
PA.
N.Y.
VT
N.H.
MASS
CONN
ME
TENN
N.C.
S.C.
GA
ALA
MISS
FLA

These seven states will lose
1,416,122 nonpublic students.

school leaders in Michigan were considering a total shutdown of their systems and that public school authorities were bracing for an avalanche of transfer students from closed nonpublic schools. Further reports indicated that parents of nonpublic school children were organizing a "vote no" crusade to defeat proposals for millage tax increase to pay public school bills and that some parishioners were strongly objecting to announcements of tentative plans to shut down parish schools.

Because of the nature of this crisis and its possible meaning to other States, the Panel met in Lansing on May 24, 1971, with a number of business, education, and government leaders. After its investigation, the Panel concluded: that the school controversy had left a large segment of Michigan citizenry frustrated and, indeed, bitter; that Michigan's leadership in quality nonpublic education had been seriously impaired; that the large and financially hobbled urban centers, notably Detroit, would have to provide facilities for a substantial number of transfer students; that the white ethnics and Blacks in Detroit who prized their nonpublic neighborhood schools faced the dismal prospect of losing such facilities in the near future; and that projections for the State's educational budget suggested an increase from $1.9 billion in 1970 to $3.7 billion by 1975—an increase that could outstrip revenue by some ninety percent.

The inescapable conclusion is this: **the prospect of massive dislocations exists in eight of the Nation's most populous States.**[1]

B. Urban Impact

The significance of nonpublic school enrollment for metropolitan areas is suggested by a simple statistic: eighty-three percent of such enrollment is found in these regions. *In the twenty largest cities, nearly two out of five school children are enrolled in nonpublic schools.* The top fifteen cities have the following enrollment figures, which reveal, interestingly enough, that ninth-ranked Buffalo and last-ranked St. Paul have percentages approximating that of Philadelphia, where nonpublic schools enroll one of every three students.

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[1] *Economic Problems in Nonpublic Schools*, p. 326.

City	Nonpublic enrollment	Percentage of total
New York City	[illegible]	[illegible]
Chicago	[illegible]	[illegible]
Philadelphia	[illegible]	[illegible]
Detroit	[illegible]	[illegible]
Los Angeles	[illegible]	[illegible]
New Orleans	[illegible]	[illegible]
Cleveland	[illegible]	[illegible]
Pittsburgh	[illegible]	[illegible]
Buffalo	[illegible]	[illegible]
Boston	[illegible]	[illegible]
Baltimore	[illegible]	[illegible]
Cincinnati	[illegible]	27.4
Milwaukee	[illegible]	[illegible]
San Francisco	[illegible]	[illegible]
St. Paul	[illegible]	[illegible]

In changing neighborhoods of such cities exist balances so delicate that access to a school of choice affects a decision to move or to stay; in the cities, too, are found other changing balances because unemployment, poor housing, infant mortality, and crime hit the poor with vengeance. For example, a statistical sampling of county unemployment rates, welfare case loads, and housing vacancies as these affect Chicago, Detroit, and Milwaukee reveals a consistently higher city rate than found in adjoining communities. The obvious conclusion is that **if the Nation needs vigorous cities, vigorous cities need their nonpublic schools.**

It is from these perspectives that a realistic assessment of the nonpublic school condition must be undertaken. The strength of the social fabric is at stake, and schools—all schools—are an essential strand in that fabric. If the strand is weakened or severed, the unravelling process will accelerate with potentially disastrous consequences for the Nation. A weakening is at hand.

For the past five years, nonpublic school enrollment has been moving downward at an alarming six percent annual rate. If this trend continues, enrollment will be about twenty-five percent less in 1975 than in 1970. The presently distressed area is Roman Catholic, where exists a distinct possibility that within a fifteen-year period, 1965–1980, enrollment may drop by almost sixty-five percent. Multiple factors are at work, among which are:

1. Movement of children from neighborhoods where there are nonpublic schools to neighborhoods where there are none;

2. Closing of nonpublic schools with resultant transfers to public schools;
3. Parents' reluctance to send children to financially troubled schools;
4. Parental decisions to avoid high tuition rates;
5. Parents' failure or inability to perceive any special educational and/or religious values in a particular school;
6. Lack of uniqueness;
7. Changing religious and cultural mores among parents in suburban areas;
8. A lower birth rate in a particular locality.

It is simplistic to conclude from research on enrollment trends that any single factor is so overriding that others can be discounted. Indeed, for city families with marginal disposable incomes, the cost may loom largest; whereas for suburban parents it may be distance to the nearest nonpublic school, new mortgage responsibilities, or secular attitudes.

While attention has been focused on Roman Catholic schools because they represent the largest and hardest-hit nonpublic segment, the problem is not exclusively theirs. During the past two years, enrollments in independent schools have declined about eleven percent; at military schools, ten percent; at boarding schools, four percent. Despite present rates for boarding students in excess of $4,000 a year, costs continue to outrun income. Ten years ago, only a quarter of the Nation's independent schools were operating with deficits; by 1971 the figure had doubled, and about twenty-five private schools have closed doors since 1968. As *Newsweek* (January 31, 1972) noted, "Most have been caught in a vicious circle: rising costs dictate increased tuition which, in turn, serves to deflate enrollments." [2]

C. Transfer Costs

Estimating cost of transferring all nonpublic school pupils to public schools is exceedingly difficult. A research team from the University of Notre Dame developed three categories, described as: (1) low excess capacity formula, which assumes a decrease in public schools' pupil/teacher ratios; (2) crude excess capacity formula, which assumes no change in pupil/teacher ratios; and (3) high excess capacity formula which assumes that the pupil/teacher ratios will rise to the highest level experienced during the past six years. Using these formulas, the researchers estimated the total cost in a range from approximately $7.7 billion (low excess capacity formula) to approximately $4 billion (high excess capacity formula). The Panel believes the higher estimate is more realistic in view of the trend to reduce rather than to increase pupil/teacher ratios in public schools.

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[2] More complete data may be available in a report prepared by USOE. Staff efforts to secure this so-called Kossoy Study were unsuccessful.

The problem would vary from State to State. In the rural and less densely populated States of the South and West, nonpublic school closings would have little effect. On the other hand, seven populous industrial States (New York, Pennsylvania, Illinois, New Jersey, California, Ohio, and Michigan) would be called upon to absorb seventy percent of the costs associated with the transfer of nonpublic school pupils to public schools.

These seven States would face a severe economic impact because: (1) public school costs are already high in these areas; (2) public school enrollments have not fallen as much as in other parts of the Nation so that the capacity to absorb more students is restricted.

Even more than the State burden would be the city crisis. To give this greater specificity the Panel considered results from research by the School of Education of the University of Michigan. These researchers sought to draw an "urban financial profile" and used Chicago, Detroit, Milwaukee, and Philadelphia for their laboratories.

The question was this: Can the public school systems of these cities, without securing additional facilities, absorb the pupils now attending nonpublic schools if all the nonpublic schools were closed? The researchers took into special account the Catholic schools, which enroll the largest number in each of these cities. Important variations exist.

In Chicago, A. Epstein and Sons, Inc., estimated rehabilitation and replacement costs for the public schools and concluded that $1,103,113,846 would be required, at current prices, to bring Chicago school facilities into good condition. But the University of Michigan researchers added:

> If, in addition, it were necessary to provide facilities for approximately 85,000 elementary pupils from the parochial schools and 45,000 secondary pupils, it would be necessary to increase this budget by at least $464,000,000. This would increase the total to approximately 1.6 billion dollars.[3]

For Detroit, a building program to house adequately all public school pupils would require a minimum expenditure of $234,000,000. If all the Roman Catholic schools of Detroit were closed at once and their students were to be housed by the Detroit schools, an additional $174,500,000 would be required. The research report also noted that if a massive shutdown of Detroit's nonpublic schools were to precipitate a large exodus of families from the city, "Closing nonpublic schools might have greater financial implications for fringe suburban areas than for the Detroit public school system." [4]

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[3] *The Financial Implications of Changing Patterns of Nonpublic School Operations in Chicago, Detroit, Milwaukee, and Philadelphia*, p. 97.

Closing of Roman Catholic schools in Milwaukee would add $47,800,800 in construction costs to the $76,000,000 program which has been authorized.[5]

The summary of the University of Michigan for the three cities was stated this way:

> It has been projected that if all the nonpublic schools which are experiencing financial difficulties, including many Roman Catholic schools, were to be closed immediately, the additional cost of housing pupils now in attendance would be as follows: Chicago, $464,000,000; Detroit, $174,500,000; and Milwaukee $47,800,000. These funds ($686,300,000) would be in addition to resources required to fund the long-range construction programs for each of these cities.

If nonpublic schools in these three cities closed over a longer period of time, the result would be that projected decreasing public school enrollment might be correspondingly replaced by transfer students from nonpublic schools. Slowly declining nonpublic school enrollments might make it possible for the central city public school systems, together with the public school systems of the surrounding suburbs, to absorb substantial numbers of the nonpublic school pupils. While the additional cost for capital outlay and operation would be much the same whether students transferred to the city schools or to their suburban counterparts, the financial impact would be distributed over a much greater area and a larger number of taxpayers. But the eventual impact is real and very substantial.

Philadelphia would be in more serious straits. The University of Michigan report indicated that between 1965 and 1971 the Philadelphia school district spent $381,163,000 for capital improvements, but despite these herculean efforts the remaining capital program proposed for 1972–77 still carried an estimated price tag of $339,244,000. An additional $60,000,000 would be required in 1978, and annual expenditures of $40,000,000 for 1979–80 would be needed to complete the currently envisioned capital program. Total cost of all phases of the school building effort would reach $880,400,000. With inflationary pressures, the total cost could be over $1,000,000,000.

The University of Michigan researchers further reported that:

> Accommodating the 136,500 pupils now in the Roman Catholic schools of Philadelphia in accordance with the goals and priorities set forth would require a necessary additional expenditure of almost $600,000,000. Housing the 58,900 secondary pupils will require about $290,000,000 and the 77,300 elemen-

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[4] *Ibid.*

[5] *Ibid.*

> tary pupils approximately $310,000,000 with no allowances for inflation.
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> To consider adding a capital program of $600,000,000, even if spread over the next decade, in the existing long-range capital program for the Philadelphia area seems outside the range of credibility, because 1971 has been a year of crisis for the capital program of Philadelphia public schools. In July 1971, the capital program was halted with the Board of Education announcement of the suspension of 28 projects which were to have been completed during the next five years.

Even with the gradual phasing out to permit incremental absorption of nonpublic school pupils into the Philadelphia public schools, "it would still be impossible for the public schools to provide for them adequately in the existing facilities or with facilities now projected. Even though fifty percent of the nonpublic school pupils were to transfer to suburban schools outside Philadelphia, it would be impossible for the public schools of Philadelphia to absorb the remainder without incurring a crushing financial burden. The present financial crisis has been brought on in part by the necessity of the public school systems to rebuild the entire school plant, after years and years of neglect."

A blue ribbon task force, consisting of thirty-one prominent Philadelphia businessmen (Jews, Protestants, and Catholics), has just completed its analysis of the Archdiocesan schools and declared that by 1975 the cumulative deficit will reach $55.4 million—even though projected per student cost for 1975 is $478, as contrasted with 1971–72 per student costs in Philadelphia public schools of $1,027. Transfers may help the financial status of public schools if State aid increases, but even this prospect is inadequate. Commenting on the task force report, School Superintendent Matthew Costanzo observed that "if we had to take on the number of youngsters they say they will drop, we'll be in dire straits."

The overall dimensions of construction costs are summarized in a report by the National Educational Finance Project, which declared:

> The school building shortage is a reality which cannot be overlooked in school finance programs. Even with the unprecedented increase in school construction since World War II, a deficit of 500,000 classrooms remained in 1968. This backlog of needed construction accumulated during the Depression years and World War II. **Especially in urban districts antiquated and educationally obsolete classrooms which normally would have been replaced have remained in use.**
>
> Between 1948 and 1968 the number of classrooms constructed each year increased from 30,900 to 75,400 and the average expenditure per classroom increased from $32,815 to an estimated $67,432. . . . In the decade of the 1970's the Nation will need approximately 120,000 classrooms per year at an estimated annual aggregate cost of $7.8 billion in 1968–69 dollars. . . .

> If these new construction needs are accurate, positive action must be taken to provide the needed funds or a moratorium on construction will result with millions of school children being ill-housed and ill-educated.[6]

The Panel is persuaded that just to meet normal projections of public school enrollment, the public burden will become heavy and can become crushing if large numbers of nonpublic school pupils are transferred into public schools. Apropos is the following statement of the Commission on School Finance:

> Cost projections are startling. Outlays for education will rise substantially during the next decade if present trends continue.
>
> Total expenditures of public school systems during the 1970–71 school year came to approximately $45 billion. During 1975–76, according to projections provided to the Commission, expenditures are estimated to reach $60 billion, and will continue climbing to the end of the decade, so that in 1980–81, they will come to some $64 billion. This is in 1970 dollars. If we assume that price increases at an annual rate of three percent, these figures will be approximately $69 billion for 1975–76 and $86 billion for 1980–81. Paying for education is going to place enormous strains on the Nation's taxpayers. What is more, the cost of other public services are going to climb at least as much if not more.[7]

In the Nation there are now 17,498 school districts, which vary enormously in size and in resources; there are over 46,000,000 children in the public schools alone, and the cost of education in these schools will be slightly over $1,000 per child this year, compared with half that sum just ten years ago. The Panel concurs with a *Washington Post* editorial of January 23, 1972: "Any new Federal fundings sufficient to make any real differences to the local school districts will have to run, in national total, to many billions of dollars. It is hard to think of any other public responsibility that is simultaneously so massive and so intricate." Any serious thought about this massive and intricate responsibility must include attention to the fiscal consequences of widespread closing of nonpublic schools.

It is clear to the Panel that most public school budgets, already heavily burdened by soaring costs for present and projected programs, would have to be drastically revised if thousands of nonpublic school pupils were added to public school rosters. Budget adjustments might require double-shift classes, shortened calendars, cuts in enrichment programs, and other reductions in quality. Yet, some public school systems already are confronted with the prospect of having to retrench on important programs for their present student body. Additional students at this time would not lessen the difficulty of giving adequate education to presently enrolled pupils.

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[6] *Future Directions for School Financing*, National Education Finance Project, pp. 29–30.

[7] *The President's Commission on School Finance*, pp. 11–12.

With recommendations from various groups for early childhood education, programs for exceptional children, vocational and adult education at all levels, and for the special needs of the inner-city schools, it is apparent that the magnitude of the challenge—when put in the context of the rising cost of other social services—is tremendous.

Not unrelated to the total problem is a disinclination of the American people to ratify and support additional revenues for the schools. In 1965 approximately three of every four bond issues received public support; in 1971 less than half were ratified.

The following table reveals a melancholy story:

BOND ISSUES

Public elementary and secondary school bond elections held, with number and percent approved, 1965 to 1971

Fiscal year ending	*Number of elections* *Total*	*Approved*	*Percent Approved*
1965	2,041	1,525	74.7
1967	1,625	1,082	66.6
1969	1,341	762	56.8
1971	1,086	507	46.7

In summary the Panel concludes:

1. Projected costs to maintain the present level of public education and to meet urban school construction needs are prohibitive.
2. The history of rejected school bond issues is not encouraging.
3. The burden for transferring nonpublic school students to the public sector will fall most heavily on States and center cities which already carry heavy financial loads.
4. Collapse of the nonpublic schools in these areas may well prove disastrous.
5. The social costs could prove more onerous and dangerous than the economic burden.

The American people thus face two basic choices:

1. Stand by passively while nonpublic schools decline and accept the inevitable consequences of further increased taxes occasioned by the transfer problem, or
2. Act on the premise that wise public policy requires intervention at critical points to sustain a system which educates over five million youngsters, evokes a multi-billion dollar private investment effort, and provides for parental choices.

The Panel concludes that public action is required, but this raises very complex legal issues.

CHAPTER IV

CONSTITUTIONAL FOUNDATIONS FOR A PUBLIC RESPONSE

BECAUSE NONPUBLIC SCHOOLS MUST MEET both Federal and State legal requirements and because at times sharply different emphases separate the two, the question of aid to pupils enrolled in these institutions involves complex issues of constitutional law.

A. The Federal Framework

Although the American Constitution is silent regarding education, court interpretations of the First and Fourteenth Amendments have developed a legal matrix wherein certain rights and limitations are reasonably defined. Most basic is the parental right of choice of a school for their children—a right safeguarded by the Supreme Court's *Pierce* [1] decision, handed down forty-seven years ago in the Oregon school controversy occasioned by that State's effort to compel parents to send their children to public schools. Although the decision in the 1925 *Pierce* case was keyed mainly to the confiscation of private property without due process (the Oregon statutes would have put all nonpublic schools out of business), the *Pierce* decision did give legal sanction to a parent's choice of nonpublic school for State-mandated schooling.

In subsequent decisions, the Court removed any lingering legal doubts regarding the parents' right to send their children to a nonpublic school. The Court's latest thinking will be revealed in a forthcoming decision involving Amish parents in Wisconsin who have pleaded that they should not be required to send their children to high school because formal education beyond the eighth grade is inconsistent with Amish religious tradition. The case involves profound questions about the public good, the State's role as *parens patriae*, parental rights, and religious freedom.

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[1] *Pierce* v. *Society of Sisters*, 268 U.S. 510 (1925).

It is one thing to assert parental rights over the education of children and quite another to protect such rights when the exercise thereof—partly in response to State requirements—is crippled for social, religious, or economic reasons. Consequently, the Supreme Court has been asked over the past 25 years to create a body of law through interpretations of the First and Fourteenth Amendments, with practically all cases hinging on the constitutionality of using public funds for the benefit of pupils enrolled in church-related schools. From these cases have come ground rules which affect every recommendation for government action.

In the 1947 *Everson* [2] decision, the Court upheld the constitutionality of a New Jersey law which provided tax-supported transportation for nonpublic school children on substantially the same basis as for public school pupils. The key to this decision was that the law could not deprive a citizen of a public service either because of his faith or his lack of it. The Court, however, also ruled that the First and Fourteenth Amendments prohibit tax aid for the direct benefit to a church-related school. In effect, the *Everson* decision closed the door to proposals for tax support of nonpublic schools but opened it to a variety of tax-financed child-benefit services. In somewhat oversimplified terms the judicial maxim was that aid to the nonpublic school child is legal, but aid to the nonpublic school is illegal.

In 1968, the Court was asked in the *Allen* case to rule on a New York law which authorized the loan of publicly owned textbooks to nonpublic school children. Evidence during the case was presented to show that loaned textbooks, at least indirectly, helped nonpublic schools by relieving them of expenses which would have been passed along to parents. In a decision with far-reaching implications, the Court ruled that the constitutionality of the statute did not revolve primarily around the question of whether a church-related school was aided in some way, but of whether the statute had (a) a secular purpose, (b) a secular effect, and (c) neither aided nor inhibited religion. The Court ruled that the New York textbook law complied with these criteria.

In 1970, the Court took jurisdiction in the *Walz* [3] case in which the constitutionality of tax exemptions for church-owned real estate was challenged. The Court conceded that tax exemption is surely a form of substantial indirect aid to church institutions but that it was preferable to taxing their properties because taxation would entangle the State in church matters in ways not permissible under the First Amendment. Thus was added the criterion of "excessive entanglement."

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[2] *Everson* v. *Board of Education*, 330 U.S. 1 (1947).

[3] *Walz* v. *Tax Commission*, 397 U.S. 664, 674 (1970).

In 1971, the Court ruled on three separate cases which were, however, consolidated for oral argument and were closely associated in the Court's verdict. The first (*Tilton* v. *Richardson*) involved the constitutionality of the Higher Education Facilities Act of 1963, which provided Federal construction grants for colleges and universities as long as the facility was not used for religious worship or in connection with a divinity program. By a five to four vote the Court upheld this Act and added the proviso that buildings constructed with public funds could never be converted to religious purposes.

The other two cases (*Lemon-DiCenso*) related to religiously affiliated elementary and secondary schools. Involved in the *Lemon* case was the constitutionality of Pennsylvania's 1968 Act which authorized the Secretary of Education to purchase certain secular educational services from nonpublic schools, directly reimbursing those schools solely for teachers' salaries, textbooks, and instructional materials. Reimbursement was restricted to courses in specific secular subjects; textbooks and materials had to be approved by the Secretary, and no payment would be made for a course containing any subject matter expressing religious teaching, or the morals or forms of sectarian worship.

The *DiCenso* decision hinged on the validity of Rhode Island's 1969 Act which provided a fifteen percent salary supplement to teachers in those nonpublic schools where the average per pupil expenditure on secular education was below that of public schools. Eligible teachers were required to offer courses taught only in public schools, with materials used in public schools; further, teachers had to agree not to teach religion courses.

What did the Court decide? The following is apposite:

> Every analysis in this area must begin with consideration of the cumulative criteria developed by the Court over many years. Three such tests may be gleaned from our cases. First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster "an excessive governmental entanglement with religion." [4]

On the basis of failure to avoid excessive government entanglement with religion, the Court struck down the aid programs in Rhode Island and in Pennsylvania. The opinion, written by Chief Justice Burger, recognized that the Court's "prior holdings do not call for total separation between Church and State" and that "some relationship between Government and religious organizations is inevitable." The Court nevertheless declared that, unlike such neutral services as bus transportation, lunches, or textbooks, it could not "ignore the dangers that a teacher under religious control and discipline poses to the separation of the religious from the purely secular aspects of the pre-college education. The conflict of functions adheres in this situation."

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[4] *Lemon v. Kurtzman*, 398 U.S. 569, 570 (1971).

In a concurring opinion, Justices Douglas and Black sounded a sharply different note. Because sectarian schools allegedly afford "the church the opportunity to indoctrinate its creed delicately or indirectly, or massively through doctrinal courses," [5] such institutions come under pervasive religious control. Justice Brennan's separate opinion ran along parallel lines. The practical effect was to have four Justices (Brennan, Black, Douglas, and Marshall) take the position that all direct aid to church-related schools, at whatever level and in whatever form, is unconstitutional. The majority was unwilling to accept this position.

In the Panel's view the full Court had an inadequate perception of realities in parochial schools because it failed to pierce the institutional veil. The entire focus was on the powers of the hierachy, the role of the pastors, and the teaching commitment of religious; ignored were parents, teachers, and pupils who are now cut off from certain forms of public assistance.

Others have launched sharper critiques. One such criticism holds that, by judicial fiat, there is now a virtual disenfranchisement of religiously committed people with respect to public policy questions about which their churches have a strong position. They ask whether the civil rights of Lutherans or Jews or Quakers are to be suppressed under the guise of "no religious division" in the same way that the civil rights of Negroes were curtailed by a Supreme Court ruling (*Plessy* v. *Ferguson*,[6] 1896) that "separate but equal" treatment was necessary for peace and order. Finally, it might be noted that some constitutional lawyers feel the time has come to challenge the denial of benefits to nonpublic school students on grounds that educational appropriations are public welfare benefits which should not be restricted by religious conditions. The challenge should be mounted.

Whatever legal opinions are involved, the Panel shares Mr. Justice White's minority statement that not only has the majority decision ignored the evidence in the Rhode Island case ("on this record there is no indication that entanglement difficulties will accompany the salary supplement program") but that—

> The Court thus creates an insoluble paradox for the State and the parochial schools. The State cannot finance secular instruction if it permits religion to be taught in the same classroom; but if it exacts a promise that religion not be so taught . . . and enforces it, it is then entangled in the "no entanglement" aspect of the Court's Establishment Clause jurisprudence.

Repercussions from this decision have been many. Michigan, Connecticut, and Ohio had plans to use State funds for teacher salary supplements, which have now been thwarted; plans for purchase of secular educational services in Illinois and New York have similarly fallen. Still to be decided are Maryland's scholarship plan, tax credit plans in Minnesota and Hawaii, and Illinois' multiple approach, which includes tuition vouchers for inner-city nonpublic school pupils.

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[5] *Ibid.*

[6] *Plessy* v. *Ferguson*, 163 U.S. 537 (1896).

In summary, the law is still being molded and shaped by both judicial philosophies and political events so that the final phase in the Federal drama over nonpublic school education is still to be enacted.

B.
State Requirements

Meanwhile, States labor with their special judicial problems. Under the Tenth Amendment to the Constitution, "powers not delegated to the Federal Government and not prohibited to the States are reserved to the States or to the people." Under these residual powers, New York in 1894 adopted the Blaine Amendment, which effectively outlawed any form of public aid to nonpublic schools—a prohibition subsequently emulated in one form or another by over forty States.

Having taken such action, the States' logical step was to provide free public school systems open to all—even though fiscal responsibility for meeting these prerequisites fell on local communities. Despite constitutional restrictions and uncertainties, States have continued to enact laws to provide tax-financed auxiliary services for nonpublic school children.

What emerges in States with a Blaine philosophy, however, is an approach toward nonpublic education that is more restricted than possible Federal initiatives; in other States the response is diluted by uncertainty over how far public authorities may legally go to foster the common good when church-related schools are involved. These facets have serious implications for the general-welfare clause of the Federal Constitution and for the level of possible public initiatives the Panel deems most appropriate. In the wind are significant straws which suggest enlargements in judicial constructions, and these will be noted by policy-makers. Some of these indications are worth noting.

C.
Latest Judicial Benchmarks

Developments in State courts and in lower Federal courts indicate that the "equal protection" clause of the Fourteenth Amendment will increasingly be called into play. While the full significance of the

Serrano decision is yet to be determined, it strongly suggests that the judiciary has not relinquished the task of social reconstruction begun in 1954 by the Warren Court. Citizens may soon have constitutional rights to demand adequate and fair expenditures for essential public services; hitherto these have been defined by references to such services as fire and police protection. Now the courts hint that welfare, clean air, and clean water may be conceived as "rights."

In the American context, the previous task of social reconstruction has been involved heavily with indirect redistribution of wealth; if equality of treatment is supplemented by a due-process concept of adequacy of treatment, then a formidable new stage in social engineering awaits us. The Court has often shown itself responsive to public opinion and to the needs of the times. Since public opinion today is more aware of the importance of nonpublic schools, more aware of parental rights, and more concerned with mounting educational costs, there is a distinct possibility for a more commodious judicial interpretation of parent's rights over the education of their children.

Other peoples with democratic traditions have met the challenge, and it is difficult to believe that Americans will be less imaginative or less concerned with justice. Canadian law has long allowed religious minorities to maintain their own schools; its federal system leaves the bulk of educational questions to decisions by the several provinces. The effect is a variety of methods which result in substantial amounts of public funds for religious schools. Not unrelated is the Dutch experience in the public funding of educational alternatives. The Dutch have provided financial parity for public and private education for over a half century. The resulting system of "segmented integration" has served as a mitigating factor to restrain the social and cultural impact of modernization. The end result is a guarantee of the right to, and the possibility of, education for every part of the population according to its own belief and choice.

D.
The Constitutional Guidelines

Though for the present the Panel must operate within a framework of existing judicial realities, it feels that forms of public support for nonpublic school students must reckon with the following:

1. **All laws must be designed to further a public purpose, that is, to promote education.**
2. **All school pupils should be eligible beneficiaries of aid programs—preferably under a single statutory rubric.**
3. **Financial assistance rendered for the benefit of a nonpublic school pupil should be subject to review by public authority.**

4. Systems of accountability for public benefits to nonpublic students must be balanced in ways which permit legitimate accountability while simultaneously avoiding excessive government entanglement.
5. Cash subsidies for direct aid to nonpublic schools should be avoided.
6. The academic integrity of nonpublic schools must be preserved.
7. While programs requiring day-by-day or week-by-week surveillance of nonpublic schools should be avoided, minimum public educational standards are reasonable.
8. Legislators must continue to wrestle with the paradox that aid for secular subjects must not be distinguished from aid for religious subjects; yet they must be constantly aware of the prohibition against the use of public funds for sectarian purposes.
9. Participation by nonpublic schools in a public aid program should be accompanied by signed compliance with Title VI of the 1964 Civil Rights Act, which outlaws discrimination on the basis of race, color, and national origin.

CHAPTER V

THE PUBLIC RESPONSE THROUGH LEGISLATIVE ACTION

SINCE THE PUBLIC INTEREST is deeply affected by the fate of nonpublic schools, it follows that the Government may not remain indifferent. The real question is whether the States, which have historically been held responsible for education under the Constitution, are equipped to meet the new challenge. Sufficient political, constitutional, and fiscal reasons exist to suggest that States alone are unprepared for this necessary task. In the following analysis attention will be given to specific legislative and administrative actions required for nonpublic school pupils in the public interest.

A. Are Present Responses Adequate?

We have recorded the fact that State responses to the needs of nonpublic school youngsters depend on: (1) the percentage of nonpublic school enrollment; (2) the constitutional flexibilities or inflexibilities; (3) the wealth of the citizenry and their willingness to be taxed for social purposes; and (4) the backlog of unmet needs. Even where fresh plans have been launched to reflect a State's special circumstances, uncertainties persist. Some have been ruled unconstitutional; others are pending in court; several have been enacted into law but not implemented.

In its final report, the President's Commission on School Finance made full State funding of education a pivotal recommendation when it urged States to shift major financial responsibility from local communities to State governments. Federal incentive grants have been proposed as a means to stimulate development of comprehensive plans toward this objective. This advocacy of full State funding, projected almost totally in terms of public schools, raises a very serious question: Will nonpublic school pupils be placed in a seriously disadvantaged position?

In light of current constitutional and fiscal matters, it is the Panel's considered judgment that public interest requires *the Federal Government to take major initiatives toward a solution of the financial crisis in nonpublic education.* Staying well within the restrictions of the First and Fourteenth Amendments, the Federal Government can enact legislation for the general welfare by providing legal forms of aid to nonpublic school pupils and to their parents. Further, because it is in a position to see the full picture, the Federal Government can perceive interrelationships between all facets of schooling, including the special financial problem in the nonpublic sector. Seeing problems as they really are is the first step toward solution.

The Federal Government not only has the resources to take this step but already has a record of achievement in the Elementary and Secondary Education Act adopted in 1965. ESEA, as it is commonly called, heads the list of Federal programs which have benefited nonpublic school pupils to a significant degree. This law was developed from a valid presumption that inclusion of nonpublic school pupils is required both in the interest of equity and in the interest of securing the political support needed for enactment of Federal aid legislation for public schools. ESEA still stands as the Federal Government's first major legislative achievement which constitutionally and effectively benefits all children.

Appreciation of ESEA's solid accomplishment does not preclude new legislation adequate to cope with the present crisis. More is required than existing special child-benefit services under public school auspices. What is needed is a constitutional and efficacious plan which permits parents to exercise choice without forcing them to assume impossible or unreasonable financial burdens.

Research has revealed that outside help from churches, philanthropies, foundations, and individual donors is not keeping pace with nonpublic schools' escalating expenses; for the foreseeable future, therefore, most additional costs will be passed along to consumers. Many parents, already hard pressed by pleas for more donations to nonpublic schools (notably church-related ones), by higher tuition and fees, by rising taxes (property, income, sales, and other) for public education, feel the limit has been reached. Clearly, any exorbitant increase in tuition and fees leaves parents with little choice but to transfer their children to a public school. In that sense, financial difficulties may be said to be at the heart of the crisis. But in a real sense the burden varies according to spatial distribution. For the inner-city poor the weight is crushing; for middle Americans in the $7,500–$15,000 levels (and especially for those at the low end), the load is significant; for young suburbanites with new homes, new mortgages, and possibly new value orientations, the encumbrance is more marginal. There are nonpublic schools in the central city which go unused by many who want and need them, but cannot afford them; there are nonpublic schools in metropolitan regions which are under utilized because parents are unsure of their ability to meet expected tuition increases or uncertain of the school's ability to survive financially; there are, relatively speaking, negligible numbers of nonpublic schools in new suburbs because private construction has come to a virtual halt.

Because parents within various socioeconomic groups experience different handicaps in exercising their right of educational choice, public policy is challenged to provide relief from excessive burdens in different ways. Furthermore, simply trying to envision how these needs will be satisfied during the critical five-year span ahead suggests that the Federal Government will become more deeply involved in long-range educational programs.

B. Major Recommendations

The Panel, therefore, proposes four major recommendations:

1. *Federal assistance to the urban poor through: (a) supplemental income allowances for nonpublic school tuitions for welfare recipients and the working poor; (b) experiments with vouchers; (c) full enforcement of ESEA provisions entitling nonpublic school pupils to certain benefits; and (d) an urban assistance program for public and nonpublic schools.*
2. *Federal income tax credits for part of nonpublic school tuition.*
3. *Federal construction loan program analogous to the FHA instrumentality for home buyers.*
4. *Tuition reimbursements to insure equity for nonpublic school children in anticipated long-range programs of Federal aid to education.*

Each of these recommendations calls for detailed analysis.

1. Federal assistance to the urban poor

Is is grossly misleading to presume that the inner-city poor are a nondescript mass of culturally, socially, intellectually, and economically disadvantaged people. These people are individuals, each with talents and aptitudes, hopes and dreams, determinations and drives to make life worthwhile despite job discrimination and other prejudices.

Studies on urban education offer incontrovertible evidence that thousands of children in the heart of large cities are locked into a cycle of unending deprivation which starts with substandard housing, insufficient diets, and inadequate schools. Retarded in basic skills by the end of the third grade, unable to undertake creative work in intermediate grades, and frustrated by their growing inability in the upper grades, thousands start high school with a self-fulfilling prophecy that they will be on the drop-out list at age sixteen—idle, unwanted, and unemployable.

Better schools alone will not solve inner-city problems; nor will huge sums of additional money break the awful cycle of poverty. Nevertheless, a comprehensive Federal urban assistance program can be used to restructure urban education so it will meet more effectively the needs of the urban poor. Frustration has been generated by the needless complexity and seeming aimlessness of a multiplicity of well-intentioned but poorly designed Federal programs.

The urgency of Federal assistance to the poor in urban public schools is evident, but equally in need are these same children in nonpublic schools. These pupils, too, need experienced and devoted teachers as well as a curriculum designed for inner-city conditions, psychological testing and remedial services, a full range of audio-visual equipment and supplies, health and nutritional programs, counseling for their parents, safe and clean school buildings, and a rich extracurricular program. Many are not receiving all these special services because their schools are generally on an austerity budget, with some on the verge of closing this June.

Inner-city church-related schools face difficult financial problems because: (a) their revenues are derived from low-income clientele; (b) parishes, the chief contributors to the schools, now in the changing neighborhoods count few adherents; (c) the increasing membership in Spanish-speaking parishes are usually very poor; (d) present school buildings are old and expensive to maintain; and (e) instructional costs have increased because more lay teachers are required.

These schools manage to survive because their teachers usually live where they teach and practice what they preach; having voluntarily accepted poverty as a way of life, they are natural neighbors to the poor and create a climate of trust. They deeply feel that their pupils deserve a full program, with all the advantages afforded children who live outside the poverty belt. More help to these children is an imperative.

To achieve this objective the Panel recommends a four-point Federal program which includes: (*a*) supplemental income allowances for nonpublic school tuition to public welfare recipients and to the working poor; (*b*) voucher plan experiments; (*c*) full enforcement of the Elementary and Secondary Education Act entitling nonpublic school pupils to benefits; and (*d*) an urban education assistance program for both public and nonpublic schools. A brief analysis of each point will elucidate this recommendation:

a. The Panel recommends that welfare reform legislation should include provisions for a supplemental budget allowance for reimbursement of nonpublic school tuition to (1) parents of a child eligible for aid to dependent children, and (2) to parents in the category of the "working poor."

This recommendation is consistent with the objectives of welfare reform, is moderately expensive, and is a practical way to allow the poor to exercise real choice of schools. Indeed, welfare reform rests on the premise that in an affluent nation, citizens should be able to support themselves without relying on monetary aid from the Government. This is why most welfare reform plans include a provision for incentive allowances to welfare recipients pursuing an education, training, or rehabilitation to render themselves economically self-sufficient.

The Panel is convinced that many welfare parents want self-dependence for themselves and for their children; they see in the nonpublic schools a high quality, firmly disciplined, and richly productive education. Welfare mothers have been known to cut back on their food to pay nonpublic school tuition. These parents say to their children that although they depend upon public welfare for food, on public housing for home, on public clinics for health care, their chosen nonpublic school is their oasis in the midst of impersonalism. Indeed, welfare allowances as reimbursement for nonpublic school tuition would also be an incentive to other welfare recipients to sacrifice for nonpublic school expenses beyond tuition.

The proposal's cost is modest. An unpublished staff study of the Joint Committee on Internal Revenue Taxation (February 10, 1972) is the basis for the Panel's estimate that supplementary payments toward tuition costs for welfare recipients and for the working poor would not exceed a total maximum of $30 million a year. This total presumes that about 370,000 children from approximately 175,000 families with annual adjusted gross incomes less than $5,000 would be eligible and that the average tuition allowance would be somewhat less than $100 per child. This means that extra funds would have to be raised from church donations and other sources.

b. The Panel recommends experimentation with the voucher plans which afford parents of inner-city children genuinely free choice between public and nonpublic schools.

There is a pressing need to determine whether inner-city parents with vouchers in hand could bring about improvements in both public and non-public schools. In a laudable effort to help the poor, reforms are often conceived by public officials and implemented by public officials as they perceive the needs of the poor, not a few of whom, however, would like less service and more freedom. The voucher plan is a step in that direction.

c. The Panel recommends full enforcement of the Elementary and Secondary Education Act which entitles nonpublic school pupils to certain benefits.

At present, Title I of ESEA is the Federal Government's largest assistance program for urban poor school children. It requires State and local public school authorities to arrange for nonpublic school pupils to receive a wide variety of auxiliary school services under public school control. While fairly effective, these arrangements have been so involved in some places that for all practical purposes nonpublic school pupils have been denied their rightful benefits. The Federal Government should therefore insure full compliance.

d. The Panel endorses the recommendation of the Commission on School Finance for the "initiation by the Federal Government of an Urban Education Assistance Program to provide emergency Federal aid on a matching basis, over a period of at least five years, to help large central city public and nonpublic schools finance such programs as (1) development of experimental and demonstration projects on urban educational problems; (2) replacement or renovation of unsafe, unsanitary, or antiquated school buildings and equipment; (3) addition of remedial, bilingual, and special teachers and professional personnel; (4) addition of teacher aides and other supporting personnel, and provision of instructional materials and services."

This proposal recognizes the urgency of the inner-city problem and the necessity to maintain an effective partnership between public and nonpublic schools. Some formidable obstacles exist, however, for the nonpublic schools. For one thing big-city public-school officials do not favor funding nonpublic schools. According to one Commission-sponsored study, "these administrators do not accept the argument that the taxpayers would get a better break by supporting the nonpublic schools *before* they close rather than paying for the absorption of these students into the public schools if or when they close." [1] A like reaction to this problem is seen among State legislators. In another Commission report, "a majority (58%) disagreed that a school-aged child is entitled to State support of his education regardless of the school attended." [2] The Commission itself obviously viewed the situation differently, as does the Panel, which recognizes the subtle difference between the public and the vested interest.

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[1] *What State Legislators Think About School Finance*, p. 25.

[2] *Big City Schools in America*, Ch. VII, p. 27.

In addition to the political and psychological obstacles there is another rooted in constitutional complications. Due note has been taken of court interpretations which bar direct aid to church-related schools, but the Court must now be asked to face the real-world situation where nonpublic schools provide sound education, generally across sectarian lines, in areas where public schools are often overcrowded and understaffed. Presently the poor have little or no choice, and this poverty factor could make a difference in judicial reasoning regarding aid to a church-related school. In the Panel's judgment it should make a difference.

Constitutional considerations may ultimately require inner-city, church-related schools to alter their corporate structure in order to receive government funds essential to their survival. For example, they may have to be legally separated from the parish; while such a requirement could be regarded as an intolerable form of governmental intrusion, virtually any adjustment to legal conditions is preferable to closing any inner-city church-related schools. In short, the Panel beseeches the Federal Government and the churches to spare no effort to preserve these schools, schools which the poor support out of their meager resources.

To the poor, this Nation should declare: *No more closings of inner-city nonpublic schools!*

2. Tax Credit

The Panel recommends prompt enactment by Congress of legislation to authorize Federal income tax credit to parents for part of tuition payments to nonpublic elementary and secondary schools.

Colloquies with leaders representing a broad spectrum of nonpublic education and dialogues with distinguished experts on constitutional law have encouraged the Panel to make tax credits another specific and urgent recommendation. Under a Federal income tax credit plan, parents of a non-public school child could deduct from their final tax liability (not from their gross income) an amount equal to part of their tuition to a nonpublic school.

The Panel is confident that tax credit legislation will: (**a**) meet constitutional criteria, (**b**) promote the public good by sustaining the current private investment in nonpublic education, (**c**) elicit public support, and (**d**) bolster the morale of parents of nonpublic school children. A comment on each is in order.

(a) Constitutional criteria [illegible]

Federal income tax credits have a strong probability of meeting constitutional criteria. Because the Supreme Court has only recently ruled that legislation "excessively entangling" church and State is unconstitutional, tax credits avoid forbidden entanglement because under the plan: (1) the taxpayer, not the school, is subject to audit, and (2) the prime beneficiary is the parent who exercises a constitutionally guaranteed option of enrolling his children in a nonpublic school. Also, the charge that tax credits are of indirect aid to a nonpublic school can be countered with the argument that they parallel the kind of indirect assistance which comes from any form of tax exemption—a tax provision held constitutional in the *Waltz* decision.

Equally relevant are these facts. Tax credit legislation imposes no administrative burden on public school agencies, requires no public school system to share its resources with nonpublic schools, and engenders no competition between public and nonpublic interests for funds appropriated for the benefit of all school children. The public schools would continue to receive their subsidies and run their programs as they see fit.

Two important issues remain: whether constitutional criteria require tax credits to apply (1) to school expenses other than tuition, such as fees or textbooks, and (2) to both public and nonpublic school expenditures. The first issue presents little difficulty. No constitutional reason obliges Congress to authorize tax credits for school expenses other than tuition. The second provokes divergent opinion among experts. The Panel perceives nothing inherently unconstitutional in a tax credit plan covering only nonpublic school tuition payments; at the same time, it acknowledges the advantages of integrating tax credit legislation with other laws for the general welfare of American education. Actually, this integration may present no great problem because it now appears that the Federal Government may move in the direction of a general aid formula which allocates funds to the States on the basis of their total school-age population.

Recognizing that legislation should be governed by principles of simplicity, clarity, and enforceability, and should leave no loopholes for abuses, the Panel sees merit in limiting the tax credits to tuition only—an expense which is readily verifiable for auditing purposes and therefore meets the requirements for good law.

(b) Tax credits serve the public good by promoting justice and by encouraging private investment in nonpublic education.

Under the Internal Revenue Code, deductions and credits are intended to establish greater horizontal equity by affording allowances for special burdens and to encourage private investment in activities which serve the public good.[3]

Examples of allowable deductions for special burdens are medical expenses, casualty losses, State and local taxes, and interest payments. Examples of tax incentives are deductions for donations to religious, charitable, and educational institutions, as well as investment and retirement credit respectively. These adjustments are allowed for any number of voluntary decisions. The State and local taxes a person pays depends, in part, on a personal decision regarding his place of residence, standard of living, investments, choice between taxable and nontaxable securities, and the like. If a justifiable reason exists for a taxpayer to assume a particular obligation, such as the adoption of a child, he is entitled to a tax adjustment. The same holds true for a voluntary donation to a college, a hospital, or a church.

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[3] The Panel's study is drawn from Roger Freeman, *Income Tax Credits for Tuitions and Gifts in Nonpublic Education*, which was prepared for the Commission.

It is logical to conclude that tax credits for nonpublic school tuition will, as have comparable adjustments, (1) sustain private investment, (2) relieve the burden of millions of Americans who exercise choice in the education of their offspring, and (3) lessen the likelihood of further burdening the taxpayers if nonpublic schools close.

Private investment in nonpublic schools can only be approximated. One U.S. Office of Education study estimated the nonpublic schools' total annual operating costs at $4.7 billion,[4] while a conservative staff figure was less than half that amount. What makes precise recording difficult is that many nonpublic schools, particularly those whose expenses are included in a general church budget, have not kept strict accounting records which isolate school expenses. The actual replacement value or market value of nonpublic school buildings is also difficult to appraise because there is no wide demand for school property.

It is logical, however, to conclude that if taxpayers could be assured that part of their tuition payments could be used as offset to their Federal income tax, they would be willing to maintain and eventually increase their investment in quality nonpublic education. Every dollar of tax credit allowed for nonpublic school tuition will be matched by a dollar or more of private money invested in American education. The alternative to no credit could be a diminution of private investment to the point where virtually all American education would have to be publicly financed.

(c) Tax credits will elicit public support

Tax credit legislation need not arouse the highly emotional disputes which have beleaguered various proposals for direct Federal aid to nonpublic schools, notably to church-related schools. Testimony from many sectors encourages the Panel to believe that enlightened public discussion of tax credits will lead to these conclusions: (1) they can relieve the complex financial crisis in nonpublic education; (2) they will cause no difficulty for public education; and (3) they will maintain a healthy pluralism. Major opposition will come from those anxious to see nonpublic schools disappear altogether or so reduced in numbers that they count for nothing in American education.

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[4] Projections of Educational Statistics to 1979–1980, USOE, 1971.

(d) Tax credits will have a healthy psychological effect on nonpublic school patrons.

Many parents, depressed about the future of nonpublic education, are understandably fearful that financial difficulties may tempt school authorities to cut corners in the academic programs, with resultant harm to their children's scholastic progress. Toleration of mediocrity has sharp limits among those able to make a choice. Now is the time for government responses which can have multiple psychological effects in restoring parents' confidence in the viability of nonpublic schools. Suggestion of such governmental action provokes consideration of the nature of the required legislation and the cost of its implementation.

While the Panel has not endorsed a particular bill, it concludes that a satisfactory statute should include these salient features:

1. Restriction of tax credit to tuition paid to nonprofit nonpublic schools which are in full compliance with Federal civil rights requirements;
2. Limitation of tax credits to a fixed percentage of the tuition paid for nonpublic elementary and secondary school education (some pending bills set the percentage at fifty percent);
3. A maximum tax credit per child, set at a figure which provides substantial aid for parents without subjecting the Federal Government to an excessive loss of tax revenue (some pending bills have set the maximum at $400 per child);
4. A reduction in credit for high-income families.

The Cost

Estimating the costs for the total amount of tax credit which parents of nonpublic school pupils could claim under proposed legislation is difficult. An unpublished staff study of the Joint Committee on Internal Revenue Taxation, dated February 10, 1972, has the latest and probably the most reliable estimate. By considering both low-income families whose tuition payments exceed their tax liability and high-income families whose credit would be reduced under the proposed legislation, this study estimates the cost to the Federal Government at approximately $500 million.

Clearly, if tuitions rise and enrollments remain constant, the cost would increase, but relatively few schools levy tuitions at the $800 level which would be required to reach the suggested $400 maximum credit. Further, parents would still be required to pay at least half the tuition so that demand will afford some restraints on pricing in the educational market; finally, even with increases, the tax money denied the Treasury would be substantially less than the total amount of tax funds required to accommodate nonpublic school pupils in public school.

[redacted]

The Federal Government has a successful history of substantial loans for construction of educational facilities and further precedents in the National Defense Education Act, where NDEA loan programs have helped millions of American students. Certain nonpublic school enrollment losses have been attributed to a combination of mobility and resulting opportunity loss; when families with children enrolled in nonpublic schools move from one place (usually urban) to another (usually suburban), they find nonpublic education is not available. In the new area the first hurdle to alternative education is the construction cost, which, incidentally, tends to run higher in the very areas where many church-related schools have placed greatest emphasis.

Completely modern and permanent new plants can be prohibitively expensive to sponsors. In a following chapter the Panel recommends experiments with mobile, low-cost units.[5] Initial programs, supported through joint ventures with the U.S. Office of Education and the Department of Housing and Urban Development, may have great utility for school construction in new towns (a growing phenomenon) and for replacement of obsolete inner-city buildings.

Predictions for any widespread use of such loans cannot be made, but here again innovative government penetrations can test the market, analyze the results, and make proper assessments of such a program's long-range practicality. This recommendation is consistent with the Panel's philosophy to encourage private investment efforts and to build on successful government precedents.

[redacted]

While the Commission on School Finance expressed the view that the Federal Government should only play a role supplementary to the States in financing school costs, it also recommended Federal incentive grants to reimburse States for part of their costs of raising the State's share of total State and local educational outlays above the previous year's percentage. Between $4 and $5 billion would be required over a five-year period to provide incentives for full State funding.

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[5] Chapter VI, A, 7.

In an understandable desire to avoid needless control over the States, the Federal Government may simply allocate Federal funds on the basis of a State's total school population. This question then arises: will nonpublic school pupils who are **counted in** by the Federal Government for the purpose of allocating funds to the States be **counted out** by States when actual benefits are distributed? If this should occur, nonpublic school children would be victims of an intolerable injustice. Yet such a possibility exists because of State constitutional restrictions or because of indifference in State capitals to nonpublic school pupils' needs. *The Panel therefore recommends that every plan for general Federal aid to the States include a provision which guarantees nonpublic school pupils' equal participation. This guarantee can readily be accomplished by a tuition reimbursement process or a withholding provision.*

Under a tuition reimbursement process, every State receiving Federal funds allocated for **all** school children in that State would be required to establish a special account which, under State control, would be so administered that parents could claim reimbursement for nonpublic school tuition up to the full cost of tuition or the full Federal per capita allotment—whichever is lower. Pennsylvania and Ohio have already embarked on the reimbursement route, and therefore on-going programs exist to provide guidance for the Federal effort.

The Panel, aware of possible constitutional difficulties with the tuition reimbursement process, nevertheless recommends its inclusion in Federal legislation so that eventually it can be tested in the courts. The alternative is to exclude nonpublic school pupils from the Federal program. Such exclusion the Panel firmly rejects.

The withholding provision could be employed when a State is forbidden by its own constitution to administer Federal funds in aid of nonpublic school pupils. The Federal Government would then withhold a pro rata share of the State's allocation and administer such funds through the process of tuition reimbursement for the parents of nonpublic school pupils in that State. The withholding provision is a process which has guaranteed nonpublic school pupils' participation in the national school lunch program and in several ESEA programs.

C.
Funding New Programs

Newspaper accounts have reported that a Federal value-added tax might replace the local property tax. Since there are 17,000 school districts which levy property taxes for their schools, it is clear that considerable time will be required to allow substantial adjustments.

The value-added tax is presently employed in most of the Common Market countries of Europe and can generate, according to published estimates, amounts in the neighborhood of $15 to $20 billion annually. It is a form of national sales tax imposed on manufacturing and distribution. Cost of the tax to the manufacturers is passed on to the ultimate consumer in the form of a price increase. Various reports indicate that government officials feel that a value-added tax would encourage American exports to Europe. The Advisory Commission on Intergovernmental Relations has been asked by the President to study the value-added tax proposal in detail, and the Panel feels it inappropriate to duplicate efforts.

It only notes that the proposed value-added tax embodies an element of regressivity. No tax should be imposed which places a disproportionate burden on the poor or low middle class. It may be possible, however, to provide for certain exemptions (food and medicine) and to incorporate certain devices (negative credits for those who pay no taxes or are in low-tax categories) to mitigate the more obvious disadvantages of the value-added tax.

The Brookings Institution (through the studies of Joseph Pechman and Benjamin Okner) has presented evidence to two Congressional Committees which rejects the value-added tax in favor of comprehensive income tax reform. The Brookings' proposals would reduce the average tax payments for families with incomes below $25,000 and would sharply increase taxes for the higher-income families. All options will be explored, and the Panel welcomes these undertakings.

D.
Conclusion

The Panel believes that contemporary America—with its high mobility, its State and regional economic interdependencies and disparities, its need for trained manpower, enlightened citizenry, and cultivated human beings—requires greater Federal concern for education. We believe the Federal Government has the resources to work with the States in providing equitably for *every* child's educational need, has the capacity to create mechanisms to stimulate both private and public efforts to offer quality schooling, and has the ability to engineer techniques for disbursements that insure efficiency, accountability, equity, and non-entanglement.

CHAPTER VI

THE PRIVATE CAPABILITY

THROUGHOUT THIS REPORT have run reinforcing themes. If the poor are to get educational choices and if the middle class are not to lose theirs, the Federal Government must help. At no time, however, was entertained the notion that the nonpublic school community would be, or should be, rescued totally by a public effort. The maxim that "God helps those who help themselves" has this secular variant: "When the going gets tough, the tough get going."

That times are tough is made clear in Commission-financed research on the economic and social dimensions of the nonpublic school crisis. These studies blend quantitative data, facts, digests of secondary research, generalizations, projections, opinions, and suggestions, and could leave the impression that nonpublic schools are so hopelessly situated an immediate call to abandon ship is the only sensible course. Produced by competent scholars under contract with the Commission, these findings must be critiqued by other experts before being accepted as the only policy-relevant body of information. No matter how the research is analyzed, it is clear that herculean measures and heroic self-sacrifice are called for.

This message, addressed to the nonpublic school community, is premised on both a fact and a value judgment. The stark fact is this: given the enormous demands on the public purse, no government instrumentality is able to provide full funding for private educational ventures over the next critical five-year period. The value judgment holds that a substantive voluntary commitment of both financial and human resources is essential to the vitality and quality of the nonpublic school enterprise.

Before delineating specific recommendations, however, the Panel wishes to reemphasize some very positive developments:

- Significant self-assessments leading to corrective action are taking place in many systems. Highly competent groups of externs have just completed two exhaustive studies for parochial schools in Washington and Philadelphia.
- A growing conviction exists that what was done fairly well by poor immigrant groups can be better done by today's affluent society.

- Because traditional values and conventional wisdom are under assault, more urgently needed than ever are schools which teach certain objective, moral and spiritual standards. As bioengineers learn more about human conception and human growth, the greater will be the pressures for social decisions relating to the individual's right to life, his relation to death, his sexual rights and duties, and the like. Today's debate on public attitudes toward abortion is simply a prelude to the whole issue of social control over individual life. Other questions impinge on the morality of war as an instrument of national policy, the priority of conscription, the traditional work ethic, the dimension of international justice, and the very concept of an all-sovereign Nation-State. Church-related schools also wrestle with situationist ethics, the nature of a faith commitment, the God-man relationships, authority, and the like. If the old challenge to sponsors of church-related schools was the preservation of the faith, the new challenge embraces the whole panorama of basic tenets on which a free society rests.

A. Recommendations

If the need for nonpublic schools is apparent and if combined public and private resources can be accumulated, the remaining ingredient is the will to put the nonpublic house in order. As a step in this direction, the Panel recommends that each nonpublic school undertake the following:

1. *Clarify its unique identity as a voluntary enterprise by setting forth its particular goals and objectives within the context of its resources and commitments.*
2. *Increase its association with all private and public schools in the locality.*
3. *Practice a policy of broad-based accountability—fiscal, professional, academic, and civic.* Nonpublic schools should lean over backwards to let the world know what they are doing.
4. *Accept a component of greater risk.* The risk will vary from school to school. One may face bankruptcy as an alternative to closing because of immediate financial pressure; another may endure public misunderstandings of its highly innovative academic programs; another may alienate clientele or financial backers because of a commitment to racial integration; and still another may opt to stay in a troubled neighborhood when opportunities beckon elsewhere. The future belongs to these nonpublic schools which dare to be exceptionally right.
5. *Break the problem-psychosis web which has created an unfortunate image of the Nation's nonpublic schools.* That nonpublic schools face a crisis is obvious, but a world of difference exists in perceiving the crisis as a challenge to do better or as a prelude to inescapable disaster.
6. *Embark on vigorous recruiting programs.* The seller's market has ended. Parents who, a few years ago, were willing

to pay a premium to enroll their children in a nonpublic school are "shopping" for the best school. It now is a buyer's market where children will be in short supply to a degree contradicting predictions made only three or four years ago. Most institutions will have to move competitively to maintain their membership.

If nonpublic schools are to operate at the full capacity necessary for financial health, their staffs, alumni, and sponsors must undertake aggressive recruitment effort. Certain prestigious academies and private universities with their systematic searches for qualified applicants have for years shown the way. In these efforts, it is common practice to involve not only professional recruiters, but alumni and faculty as well. If alumni and teachers stand by while enrollment drops, then who but themselves must carry a major burden for their institutions' crisis?

7. *Experiment with mobile units to minimize construction costs—especially in growing suburbs where needs for new public services are acute and public financial resources stretched.* Nonpublic school construction, a booming industry during the late fifties and early sixties, has come to a virtual halt, with the result that students who have moved from city to suburban neighborhoods are without choice. High construction costs deter churches and other traditional sponsors from going deeper into debt for new suburban schools. What occurs *in* the school is more important than what is put *on* the school. Mobile units can be easily dismantled when other facilities are required, when elements in the new community have resources for more permanent facilities, or, finally, when the same units are more needed to meet other changing mobility patterns.
8. *Pool resources with other nonpublic schools in a unified public relations project.* The advantages of such a joint enterprise are many. No public-relations program can be successful without the institution defining its image, and no package can be long sold unless realities match the claims. Schools must measure up to their stated ideals. Another by-product will be greater exchanges of information on curricula, teacher recruitment, staff salaries, budgetary operations, and the like. A knowledge of common problems may induce common solutions. And, of course, the ultimate goal of a more enlightened citizenry will be more fully realized.
9. *Exercise firm control over operating costs.* In this regard the Panel urges consideration of the following specific possibilities:
   a. **Operate at full capacity.** Each school should determine the number of pupils it can recruit and service within the limits of its physical, financial, and personnel resources.
   b. **Achieve payroll savings** which result from differential staffing, including employment of part-time teachers in special fields and paraprofessionals.
   c. **Purchase equipment and supplies through cooperative agencies** which give the advantages of wholesale prices.

- d. **Take steps to give full-time employment** by means of the year-round school, and/or assignment to summer school. Supplemental employment may be one way to guarantee teachers an annual wage commensurate with their professional status and performance.
- e. **Use the services of non-salaried volunteers whenever possible.** A voluntary enterprise should welcome volunteered assistance.

10. *Intensify efforts to expand and improve all private income sources.* Potential for increased revenue from higher tuition and fees and from larger contributions is unclear. While there is evidence that raised tuitions cause no mass exodus, one study showed that objection to higher rates was the alleged reason for about twenty percent of the transfers from nonpublic schools.

A hard question for financially harassed nonpublic school administrators is whether the support level can be raised. When economists were asked how much more supporters of nonpublic schools can pay, they answered that the gross amount of money in the hands of the nonpublic school people is more than sufficient; but the real potential is inseparably linked with judgments on the worth of nonpublic education. Federal tax arrangements encourage voluntary support, and full use of such incentives should be made.

An average annual tuition of only seventy dollars for Roman Catholic elementary schools is so remarkably low that it can probably be raised without undue hardship. The figure, however, is misleading because the average includes a large number which for years have never charged tuition; consequently, the median figure for schools charging tuition is higher. Whether a school derives its chief support from tuition or from church contributions is immaterial in terms of the total need, but the pattern of finance does, of course, have implications for government programs described elsewhere in this report.

Without prejudice to its firm recommendations for government aid programs, the Panel proposes these avenues to increase private investment:

- a. For the support of church-related schools, encourage increased donations to the church, at least in proportion to inflationary trends. The income tax advantages should be made clear to all prospective contributors.
- b. Regular raises are recommended so that tuition income will not lag behind the higher prices being charged for the school's normal purchase of goods and services.
- c. To avoid "hand-to-mouth" financing and an atmosphere of constant crisis, nonpublic schools should have professionally prepared budgets developed after the widest possible consultation with the schools' patrons and benefactors. A major factor in the budget should be a long-term commitment to steady support.
- d. Full public accounting should be made of the revenues and expenses, with a view to publicizing both the gen-

erosity and the needs of those supporting and operating nonpublic schools.

   c. Within its own tradition, each school should take full advantage of all government benefits.

11. *Form partnerships wherever possible with institutions of higher learning and especially with those having the same sponsors.* Qualified interns and apprentices should be hired, and public regulations restricting their employment should be modified. Innovative arrangements with college and university faculty should be undertaken to the end that new and exciting teaching materials may be provided at low cost, consultant services offered on a sustaining basis, and other special skills acquired.
12. *Intensify the personal relationships between teacher and pupil.* One consistent result of attitudinal surveys offers evidence to show that supporters of nonpublic schools believe such institutions give more individual attention, maintain better discipline, and encourage an atmosphere of serious study. If this personal dimension is as crucial as research indicates, then the nonpublic schools must extend and reinforce that quality. Experiments which involve parents in the child's learning experiences could prove enormously advantageous.
13. *Embrace a full share of the moral and legal responsibility for integrated education.* Mere compliance with the minimum requirements of civil rights laws is not enough. The Nation expects its nonpublic schools to lead in discovering reasonable ways to advance the cause of racial integration. They should set a good example. Under no circumstances should a nonpublic school allow itself to become a haven for pupils in flight from public schools undergoing racial integration. It is useful to recall President John F. Kennedy's words at the time of the Birmingham crisis:

> Laws alone cannot make men right—we Americans are confronted primarily with a moral issue. It is as old as the Scriptures and is as clear as the American Constitution. The heart of the question is whether all Americans are to be afforded equal rights and opportunities, whether we are going to treat our fellow Americans as we want to be treated. . . . It is not enough to pin the blame on others or to deplore the facts we face. It is time to act in our daily lives.

B. Summary

The foregoing suggestions can only be made meaningful by the non-public school community itself. To that end the Panel urges *CAPE* to seek funding to support programs of self-help. The rescue operation must begin at home. The agenda for the rest of the decade is formidable. It is also exciting and attainable.

CHAPTER VII

TOWARD A MEANINGFUL PUBLIC DISCUSSION

FOUR YEARS FROM NOW, when the Nation celebrates its two-hundredth anniversary of independence, the fate of nonpublic schools, as they are known today, will have been largely determined. Wide discussion must precede public policy decisions regarding the future of pluralism in American education. The discussions will be lively and the conclusions fateful. The Panel suggests these key criteria for enlightened public debate:

A.
The Criterion on Constitutionality

Even as schools struggle to further the ideal of a desegregated society, they concurrently face the task of reconciling religious freedom with the Non-Establishment Clause of the Constitution. New approaches should be undertaken in the light of recent decisions.

B.
The Criterion of Opportunity

The basic premise for opportunity asserts that all children have a moral right to an education appropriate to their needs and potential. Obvious needs include education for competence in skills of reading, mathematics, and writing, and in such other civic-vocational skills that may constitute the individual child's specific interest. Beyond these informational areas are the *formational* needs, that is, grounding in moral and spiritual values, without which a free people cannot long exist.

C.
The Criterion of Choice

Primary responsibility for education rests with the parent, not with the State. The fundamental expression of such obligation is the capacity of parents to select the school which they deem best accords with their child's needs. Rejected is the notion that a State, because it depends on an enlightened citizenry for its survival, should insure it by legislation which eliminates the parental role. In exercising this right, quite obviously parents may not indulge in racial or other forms of social injustice.

D.
The Criterion of Quality

A school must be responsive to the varying needs of different children. While research on educational effectiveness is very extensive, the findings are neither consistent nor policy-relevant. This holds true whether the research deals with: (a) *input/output paradigms*, in which achievement is determined by the largess of resources offered the student; (b) the *process* approach, in which achievement is related to student/teacher interaction; or (c) the *organizational* approach, in which schools with multiple goals have their success measured by bureaucracy. The Panel feels that one truism underlies all others: competent men and women teaching what they enjoy, where they wish, to students seeking to learn have a positive quality denied to educational enterprises lacking these basic conditions.

E.
The Criterion of Equity

No plan for educational reform should be encouraged if the net result is to diminish or obstruct the goal of a free, responsible, and integrated society, to place the heaviest financial burden on those least able to sustain it, or to deny access to schools favored by parents for their children. Equity, therefore, embraces not simply economic standards but psychosocial and moral qualities. While equity defies precise quantification, it will yield to rough-hewn norms for justice.

F.
The Criterion of Incentive

This criterion refers to mechanisms which encourage Americans to invest in education, to take an active role in its development, and to give freely and voluntarily to its support. Willingness to shoulder a fair tax burden is essential, but if willingness stops at this point, the country not only loses voluntary contributions to, and voluntary investments in, the education of its children but also departs substantially from those laudable voluntaristic efforts noted by de Tocqueville in his classic study, *Democracy in America.* Everything should be done to maintain and increase the multi-billion dollar investment in nonpublic school students. This investment is meaningful to the vitality of an American society and to over five million students enrolled in the privately-supported sector.

Not unrelated to private investment is private giving. Anything which encourages a donative policy, with the concomitant note of sacrifice, should be encouraged. Personal sacrifice contributes toward cementing a free society. Something important has been learned from civil rights legislation in terms of what the Government can do to foster and sustain a free society, namely, that without good will and voluntarism the most noble legislation will prove inadequate.

G.
The Criterion of Diversity

Part of America's genius has been to welcome people of richly variegated origins. Too often the ideal has been breached under the misguided view that "one nation indivisible" meant one homogenized citizenry. In truth, the United States is really a Nation-State composed of many national and cultural groups, with private institutions the practical means to reflect this diversity. But private institutions are in grave jeopardy. As Alan Pifer stated in his 1970 report to the Carnegie Foundation:

> Unless this decline (in private institutions) is arrested and reversed, we and our children after us, will almost certainly be living in a society where the idea of private initiative for the common good has become little but a quaint anachronism largely associated with the mores of an earlier age. Perhaps at that time there will be Americans who are reasonably satisfied with the kinds of lives offered them by a society which functions solely through public institutions. But there may well be others with a great yearning for more variety, more choice, more

animation, and more freedom in their lives than such a system would be likely to provide.

Not all Americans will accept these criteria, and many who do accept them will give different interpretations on what they really mean and how they can best be implemented. The important thing is to place the criteria under critical judgment and to trust democracy's ultimate logic.

CHAPTER VIII

SUMMARY

THE FINAL BALANCE SHEET must, of course, include major findings of fact and the implications of these findings for the public good. A brief restatement of both provides appropriate prelude to the Panel's summation of recommendations for both public and private action.

A. Findings of Fact

These are the finding of fact:

- Wide diversity of types exists within the nonpublic school segment.
- Enrollments are declining. Roman Catholic elementary schools lost 20.7 percent of their registrants between 1963 and 1969; the Missouri Synod of Lutheran Schools has also dipped in enrollment. But researchers reported, "*It seems likely that the storm now buffeting Catholic schools will soon affect most other nonpublic schools in the United States.*"[1]
- Factors explaining declines are so mixed that it is unwise to rely on a single-cause approach in developing policy recommendations.
- Costs are rising. This is especially true of teachers' salaries, which constitute about seventy percent of operation costs. The growth of nonpublic school salaries can be expected to keep pace with that of the public sector.
- Constitutional criteria are still fluid, even though direct aid to to church-related schools is impermissible.
- Nonschool influences on learning are so powerful that solutions directed only toward school problems will prove inadequate.
- Widespread ignorance of the nonpublic school enterprise exists.
- Acceptance of nonpublic schools as necessary and nondivisive components of American education is growing.

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[1] Issues of Aid to Nonpublic Schools, I, Ch. VII: 2.

B. Implications

1. **For the nonpublic community:**
   - The days of an assured student demand and automatic support have ended.
   - Overemphasis on problems, to the neglect of problem-solving, has created a poor public image.
   - Insularity has impeded comprehensive reform because problems of one school were not perceived as potential problems for all schools.
   - The public school crisis itself is so severe that demands for total public funding are presently unrealistic; therefore public support plans will still require enormous self-help.
2. **For the public:**
   - Some $3 billion of added operating costs could annually fall on the already heavily burdened public sector if nonpublic schools collapse.
   - The heaviest burden will fall on seven industrial States and on major urban centers which desperately need stabilizing support from every source.
   - The sociocultural costs may prove more prohibitive than dollar costs, especially for racially changing neighborhoods.
   - Effective choices for alternative education are declining.

C. The Public Interest

There is no doubt that educational pluralism is a force for good in American life. This view is fully shared by the Commission on School Finance, which concluded that nonpublic schools serve the public interest because:[2]

- They provide diversity, choice, and healthy competition to traditional public education.
- (They provide) the means for substantial groups of Americans to express themselves socially, ethnically, culturally, and religiously through educational institutions.[3]
- Inner-city religious schools may preserve a degree of ethnic and racial separation, but, at the same time, they also preserve at least a semblance of racial balance in these old neighborhoods.
- Urban nonpublic schools often enroll a significant number of children who are not adherents to their faith. This would

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[2] *Schools, People, and Money*, pp. 54–6.

[3] The Ohio State University Research Foundation Report to the Commission concluded that "the current forms of urban educational governance makes little allowance for diversity." *Problems of Financing Inner-City Schools*, p. 52.

indicate that their parents consider these schools preferable in quality to public education available to them.

These are surely elements of consequence to the public purpose.

D. Recommendations

For the nonpublic school community:

- Sharpen identity by defining specific goals and objectives for each school.
- Associate with public and other nonpublic educational agencies.
- Practice broad-based accountability.
- Break the problem-psychosis syndrome.
- Recruit vigorously.
- Experiment with economical mobile school construction.
- Mount joint public relations projects.
- Keep tight rein on operating costs.
- Strive to reach all private income sources—tuitions, gifts, contributed services.
- Build partnerships with colleges and universities, especially with those maintained by the same sponsors.
- Intensify the personal dimension in teacher/pupil relationships.
- Involve parents.
- Be a dedicated partner in integrated education.

For the public:

- Support Federal assistance programs for the urban poor.
- Grant Federal tax credits for nonpublic tuition costs.
- Extend Federal construction loan programs to nonpublic school sponsors.
- Provide participation to nonpublic school pupils on the same basis as for public school students in all future federal aid programs.

E. Valedictory

The time has come for a bold new look at education. To look boldly requires avoidance of two evils: (1) of ignoring the past and inviting previous errors, or (2) of worshipping the past and clinging to molds now obsolete.

For future education, the greater threat comes from the second course. All too vivid are the successes rather than the shortcomings of the melting-pot theory; all too ingrained is the memory of early religious divisiveness rather than religion's unifying contribution; all too stressed is the threat of the nonpublic schools to the establishment, and forgotten are the attacks on religious and ethnic schools, especially violent after World War I. Problems which divide us today are no longer rooted in religious prejudice. Race and ethnic identity, poverty and crime, drugs and pollution are now the Nation's domestic concern.

The country's needs have changed. The churches' needs have changed. The schools' needs have changed. And new needs raise new questions. Can evidence support the myth that a seventeen-year-old high school senior is being indoctrinated in a church-related school, but a seventeen-year-old freshman is being educated in a church-related college? Is a publicly funded church-related school which fulfills all State requirements an intrinsic danger to the separation of church and State? What religious sect espouses an established State church? This world of fantasy must end sometime.

When it does, genuine freedom of choice in education will be the possession of all Americans. A Bill of Educational Rights can make this Nation's 1976 anniversary truly meaningful. In a word, the challenge to the American conscience is simply how best to deal with consequences flowing from the moment—

A CHILD IS BORN!

Mr. **Brotzman**. I will yield to the gentleman from Illinois.

Mr. **Collier**. I certainly don't profess to be, in any way, an expert in the field of constitutional law, but long ago we adopted, notwithstanding the basic concept of separation of church and state, a provision to the effect that a contribution to a church is deductible. How then can there really be a constitutional question in this case?

I thank the gentleman for yielding.

Mr. **Brotzman**. I think there is a constitutional question, and I think it comes from that line of cases that prohibits the distribution of tax funds for so-called secular school purposes. I have not seen any cases that permit leaving the money there in the first place; that is, on the so-called tax credit theory.

Mr. **Carey**. I would like to make the record clear at this point. It is extremely significant that all the court cases including the latest one, the *Lemon* case, really concern the trial of actions relating to State statutes against the clear-cut provisions of State constitutional prohibitions for the use of State public funds.

There has been no court finding that an act of Congress relating to education has ran afoul of constitutional principles. No case of that kind has been handed down by the court. In fact, the only case that concerned an act of Congress, the Higher Education Act, was upheld in the *Tilton* case, which came down the same time as the *Lemon* case.

So, the only time the court has ruled on the constitutionality of Federal funds, it upheld the Higher Educational Act provisions save one minor recommendation, which has since been handled by the committee.

Mr. **Brotzman**. I am aware of that differentiation.

May I ask one more question on this point? Has there been a State court case where they have approved the so-called tax credit approach?

Rabbi **Sherer**. A few weeks ago the State of Minnesota approved not only the concept of the Minnesota State law, which gives tax credits but has what Congressman Carey calls tax remissions as part of its law. That was approved by the Minnesota State court.

Mr. **Brotzman**. I yield to the gentleman from Florida.

Mr. **Gibbons**. I don't think you can discuss it wothout clearly looking at the origins of the U.S. Constitution. The amendment was drafted by Madison and Thomas Jefferson, when Patrick Henry and the Virginia Legislature were involved in the disestablishment of the Anglican Church in Virginia.

The whole debate and history of the first amendment is exactly in point with what you are discussing here. There Patrick Henry was trying to give money from the taxpayers of Virginia to educate teachers in the Anglican Church, and that is the basis of the first amendment—the historical development of the first amendment written by James Madison that is part of our Constitution today.

For you all to sit here today and say there is no constitutional question involved is a shock to me. That is why I want to see the legal studies that you have made as to the question of constitutionality because it is very much in point. Anyone who has ever studied the history of the United States ought to know that.

Mr. **Carey**. Would the gentleman yield to me?

Mr. **Gibbons**. I don't have the floor.

Mr. **Brotzman**. I still have the floor.

The CHAIRMAN. Let's let Rabbi Sherer reply.

RABBI SHERER. As in life, there are many questions, but there are also answers. We, in our statement, clearly said we recognize the difficulties in working within the framework of the tax laws. We recognize there is a question, but our attorneys, as do the Government attorneys, say there are answers to these questions and with the chairman's permission it is our intention, as already stated by our executive director, to submit to you opinions from respected constitutional authorities explaining why the tax credit vehicle is in their views constitutional.

Mr. BROTZMAN. That is all I have. Thank you very much.

Mr. CAREY. Since the rabbi will have a brief prepared by a constitutional authority, I won't engage in a colloquy with Mr. Gibbons of Florida. I don't think I qualify as a constitutional expert, although he may. My notion of the first amendment leaves open in the final Madison draft the free exercise clause which gave preeminence to the disestablishment clause.

The CHAIRMAN. Mr. Corman.

Mr. CORMAN. I am sure there is a fundamental question as to whether we should get into that, and after that, how much should we contribute in tax dollars to students in private schools? I call your attention to the fact that under our tax laws we allow for the great bulk of parents about $105 a year for federal support of their child. That is based on the 14-percent rate, but I guess that is the bulk of what the young children get.

For a welfare recipient in Mississippi, the amount for total expenses for a child is $177 a month. Is it realistic to say in the face of that that we ought to pay $200 a year for this child to go to a private school?

Rabbi SHERER. The fact does remain realistically for the public schoolchild that there are other avenues of income to make certain that his education can be provided in a sensible manner over and above the contribution of the Federal Government. As far as the nonpublic schoolchild is concerned, there is absolutely no other recourse over and above the charitable giving of the religious faith communities and their members in this country.

So that on the one hand the public schoolchild has several sources of income. The nonpublic schoolchild has only the charitable giving and unless our Federal Government as we mentioned in our testimony will come to grips with some support than the viability of his being educated and of the parent getting the freedom of choice is really not meaningful or realistic.

Mr. CORMAN. I wonder if we have really come to grips in taking care of a child in or out of school. In a sense, we give a credit of $105 toward the total expense that a parent must bear if he is in the low-income bracket. That is the advantage he has for having a child. It is just a problem for me to try to parcel out tax dollars without knowing where they can justifiably be spent.

The administration testified yesterday supporting the negative income tax portion of the bill, but they want it cut from other expenditures. Initially they indicated they want it to come from the public school sector, but they did seem to change their mind on that phrase.

We seem to have failed to address ourselves to so many human problems. Tax credit for nonpublic school tuition may be very high on the list, but the child living on $177 a month in a welfare family is a difficult problem too.

Mr. **Collier.** Would the gentleman yield to me?

Mr. **Corman.** Yes, sir.

Mr. **Collier.** What you are doing is completely ignoring the other sources of public funds which would certainly eliminate the inequity to which it would inure.

The **Chairman.** Are there any further questions?

Mr. Waggonner.

Mr. **Waggonner.** Rabbi Sherer, in looking at your statement, in the first paragraph beginning on page 2, you say you are here today on behalf of millions of parents fighting to sustain a basic freedom, freedom of choice. This is a real issue. "We believe the right of the parent to choose the place and form of education for his child is a right guaranteed by the Constitution."

I would like for you to elaborate a little further on that particular statement about freedom of choice. With the language you use you don't place any limitation on freedom of choice as a constitutional right. Is that in effect what you are really saying?

Rabbi **Sherer.** There is the *Pierce* case which talks about that in clear-cut terms that parents are entitled to choose whatever type of education they seem fit and deem fit for their children. At the same time it should be pointed out that in the very beginning from Colonial days and from our very inception as a nation, the American way of life never meant for educational society to be monolithic or to be a straitjacket. Going back to our very beginning as a nation, the basic idea of American education saw the various colors of the rainbow as being the ultimate goal so that we have this diversity, but I believe that there are constitutional cases which we could quote and, Mr. Zylstra, if you have them here in your panel studies, we can forward them to you, Congressman, to buttress up what we are trying to present this morning.

Mr. **Waggonner.** I would like for this to be a part of the record. After my question you spoke of the type of education. In your prepared statement you spoke of the place and the forum of education. There is a considerable difference between the place and the forum which is a type of which you just spoke.

I want the record to show officially whether you are really taking a position in making your voice heard for the first time for the place for neighborhood schools.

Rabbi **Sherer.** The concept of neighborhood schools is not what we are alluding to in this particular document. What we are talking about is the life style, values, and whatever type of school a parent desires. If you are seeking legal background, the legal document that we will present will cover a broad area of issues which I believe will answer the various points that you raise.

Mr. **Waggonner.** You are not taking a position, then, when you use the word "place" for the principle of neighborhood schools?

Rabbi **Sherer.** We are talking in terms of nonpublic school sector. Our concern as nonpublic educators relates to nonpublic education.

Mr. **Waggonner**. You would say then the Constitution makes provision for nonpublic school students and that it does not make provision for the public school students?

Rabbi **Sherer**. As long as the schools do not discriminate on the basis of race, color, or national origin, we believe the school has a right to exist.

Mr. **Waggonner**. I am not talking so much about the right of the school to exist, but your stated position is that the parent has the right to choose the place and forum.

Rabbi **Sherer**. So long as the place and form of the school he chooses lives up to certain constitutional requirements and to the laws of Congress. As long as that school lives up to the laws of Congress and the Constitution, the parent should have the right to choose that place or form.

Mr. **Waggonner**. Then you are qualifying your blanket statement that everybody is guaranteed by the Constitution the right to choose a place and the form of education.

Rabbi **Sherer**. Congressman, I am qualifying it to the extent that every statement we make and every law passed by Congress is based on the need to conform to the Constitution of the United States. I believe without having spelled it out in this document, it is certainly implicit. We are law-abiding citizens and we expect the citizens of the country to understand that we will abide by the law.

Mr. **Waggonner**. How do you square that with page 10 of your statement where you say, "Mr. Chairman, Citizens Relief for Education by Income Tax seeks fair and equitable treatment under the law for all citizens."

You didn't say for all citizens who choose to send their youngsters to nonpublic schools. You used the all-inclusive word "all."

Rabbi **Sherer**. Congressman, we believe all citizens of our country do indeed have the right at this time to send their children to a school which is operating under the laws of our land. When we speak here about seeking fair and equitable treatment under the law for all citizens, in the framework of this particular hearing, we are referring to that segment of our citizens who are unjustly being denied their right because of "pocketbook persuasion" from sending their child to a school of their choice, not by Constitution but by the financial concerns.

We feel and we state very clearly that there should be equal treatment for all citizens so long as they send their children to schools which abide by the laws of our country.

Mr. **Waggonner**. You have advanced the argument that they have the constitutional right. Are you now taking the position that when there is a conflict the laws of Congress transcend the Constitution?

Rabbi **Sherer**. Sir, I am certainly not equipped by training or what have you to determine the fine points between the relationships between Congress and the Supreme Court. I would say that American citizens have the duty and the obligation to live up to the laws of the land as they are laid out in the Congress of the United States and as they are spelled out by the Supreme Court. Our only concern that we addressed ourselves to this morning is the fact that, while this consttutional right is here and is available for all parents, the nonpublic school parent is being denied the right not by the Constitution, not by the law, but by the realities of life itself.

Mr. WAGGONNER. You are not taking the position that you are more concerned with the problems of the nonpublic school students than of the public school student, are you?

Rabbi SHERER. I said in our original statement about half an hour ago that we are concerned with the totality of American education. Our presentation this morning, within the framework of this hearing, is about the problems, the serious problems, of the nonpublic school parents, sir.

Mr. WAGGONNER. In effect, if you care to respond to my statement, you are qualifying your statement that you have submitted for the record by saying that you are really not talking about all citizens when you talk about freedom of choice. You are talking about all citizens who exercise their freedom of choice. On that I agree with you.

I am not being argumentative. I am trying to show that you took a rather inconsistent, unqualified position in your prepared statement. You are proving the point that, American human nature being what it is, we have given some credence today to the adage that there are at least two things with which you cannot tamper: a man's children or his pocketbook without someone's expressing disagreement. Isn't that really about what you are saying?

Rabbi SHERER. Congressman, with all due respect we feel that in our statement we clearly enunciate the view that every parent should be able to exercise his freedom of choice, but it is obvious that in this country, we are a country of laws and we have to abide by the laws. We of the nonpublic school sector will abide by the laws, and we are abiding by the law.

We are not narrowing or qualifying our statement. I don't consider this a qualification if we make a simple statement of fact that everyone must abide by the law. We will continue to abide by the law, and we merely ask within the framework of the law, that injustice to parents be removed.

Mr. WAGGONNER. Would you agree with the statement you have taken this position as long as one is available to fancy his whims or to fancy the exercise of his freedom of choice, he should be allowed to do it. But if he is financially unable to exercise this freedom of choice, the Government should subsidize him?

Rabbi SHERER. We are not talking in terms of subsidy.

Mr. WAGGONNER. You do not consider a tax credit a form of subsidy?

Rabbi SHERER. We would consider it a rectification of injustice to a man who is paying double taxation. A man whose money is being utilized for sending his neighbors' children to a public school at the same time he has to take his own funds and tax himself again to send his child to a nonpublic school. It is a rectification of taxation.

Mr. WAGGONNER. Are you saying the payment of taxes for public education should not be required by all? Are you saying it is unconstitutional, the so-called double taxation?

Rabbi SHERER. There is no indication in our statement that we are about to boycott the payment of taxes. As I said throughout our testimony this morning, we are American citizens, fulfilling our obligations to the letter of the law. We merely ask that that part of the tax money that we are giving to educate our neighbor's child in a public school be refunded to us to enable at least partly to bear the brunt of exercising our right of sending a child to a school of our choice.

Mr. **Waggonner**. Should a credit be granted, do you take the position that in no way constitutes any form of a subsidy which could in any way aid a religion, any religion or all religions?

Rabbi **Sherer**. In our view this is not a subsidy to the school. This is an assistance to a parent by giving him back some of the money that he has already given to the U.S. Government and I would distinguish, if I may, between a subsidy as one who grants a certain amount of money to someone out of the goodness of his heart or to help him in some dire need. Here we are talking in terms of this nonpublic school parent having already given an amount of money to the Government for the purposes of education and the Government now is merely going to return to him part of his own money.

Mr. **Waggonner**. You are not taking the position now that this tax credit is one of dire need?

Rabbi **Sherer**. It is one of dire need, but it is not a subsidy.

Mr. **Gibbons**. I am intrigued by this argument we are doing tax justice by giving back to someone who has paid some taxes money that they gave because they send their children to private schools. How about the people who don't have any children? Shouldn't we give them some tax money back, too? They pay the same school taxes.

Rabbi **Sherer**. Congressman, we have never objected to paying taxes to the Government for the use of public schools. We have not come here for this purpose. We pay these taxes.

Mr. **Gibbons**. Your case is based on the argument, if I understand it, that your people are entitled to some money back because they pay tax money for which they get no benefit. Well, how about the people who have no children? Should we give them money back, too?

Rabbi **Sherer**. We are not asking for money back if our children do not go to nonpublic schools. In laying a broad base of rationale for tax credits, Congressman, one of the points we are making is to distinguish between an outright grant or subsidy to a farmer or what-have-you and what we are asking for. One of the distinctions is that we are in essence getting a refund of money that we have paid to the Government.

We are in no way asking that if there is no dire need as in our case that there be any reason for nonpayment of taxes.

Mr. **Waggonner**. If you pursue that argument far enough, you reach the conclusion a man who has paid his hard-earned dollars into the General Treasury of the United States, if he is not a beneficiary or recipient of welfare, then he would be entitled to a refund there.

Rabbi **Sherer**. We don't intend to pursue it that far because not everything in life can be pursued to the *n*th degree. A lot of things in logic would not work out that way if we were to pursue it to the *n*th degree.

All we are saying is that one of the rational foundations of our claim to differentiate between a subsidy and a tax credit is that here, in essence, we are returning part of the money to the parent that he has paid in.

Mr. **Waggonner**. But you are willing to pursue it to the point that you reap some benefit.

Rabbi **Sherer**. Not because we reap a benefit, but because the American educational society and America in its entirety will reap the benefit of making it possible for diversity in education, for educational competition to flourish and continue rather than withering at the vine.

Mr. **Waggonner**. Do you view this as a subsidy to higher education or a subsidy to poorer people?

Rabbi **Sherer**. We view this as a problem which affects nonpublic school parents who are unable because of financial reasons to send a child to a school of their choice.

Mr. **Waggonner**. Thank you, Mr. Chairman.

The **Chairman**. Mr. Carey?

Mr. **Carey**. I just want to make the point that it is very plain why this is not a subsidy in the term we normally use that expression.

The schools we are talking about fulfill the compulsory education requirement laws of the States. These schools, therefore, perform or provide a public service. That is far different from someone who receives a subsidy not pursuant to a compulsory law, which is placed upon the institution by the State.

I might add that even where there is not compulsion now, elements of incentive are appearing, as we have moved clearly in the direction of asking those who are polluting the environment to improve their facilities by granting incentives. This is not out of character with the public good.

The point is that the nonpublic schools fulfill the compulsory educational laws of the State as well as qualify under section 501(c)(3) of the Internal Revenue Code as charitable organizations.

Secondly, with regard to the points made by my colleague from Florida as far as relieving those with no children of the expense of supporting schools, we heard yesterday from the administration that perhaps an amendment to title I could be offered. We should examine the impact of taxes of elderly and the unfair burden placed upon them by the high school taxes in communities.

If he wants to make an amendment to title I, I am prepared to accept it, but I think the group here is talking to title II.

The **Chairman**. If there are no other questions, thank you very much, gentlemen, for your appearance this morning.

Without objection the committee will recess until 2 o'clock this afternoon.

(Whereupon, at 12:15 p.m. the committee recessed, to reconvene at 2 p.m. of the same day.)

AFTER RECESS

Mr. **Green** (presiding). I would like, at this time, to determine whether or not Mrs. Rebecca Goldblum is in the room.

Mrs. **Goldblum**. Yes, Mr. Chairman.

Mr. **Green**. Mrs. Goldblum, we would like to resume the hearings at this time. If you would come forward, we will resume these hearings with your testimony.

STATEMENT OF REBECCA GOLDBLUM, VICE PRESIDENT, AMERICAN ETHICAL UNION, NEW YORK, N.Y., AND CHAIRMAN, COMMITTEE ON ETHICAL CONCERNS OF THE NATIONAL WOMEN'S CONFERENCE, AMERICAN ETHICAL UNION

Mrs. GOLDBLUM. Mr. Chairman and honorable members of this committee: My name is Rebecca Goldblum. I am vice president of the American Ethical Union, which is an ethical culture and humanist federation of 26 religious societies and fellowships as well as members-at-large of the ethical-humanist philosophy throughout the United States. Our headquarters are at 2 West 64 Street, New York City.

I am also chairman of the Committee on Ethical Concerns of the National Women's Conference of the American Ethical Union.

My testimony will be confined to the issues involved in title II of the act, as my organization has not taken a position on title I, although we favor it in principle.

As a religious organization, we believe in the preservation and the improvement of the democratic way of life, believing that a person can develop to his highest potential in this way. We are convinced that the public school system is the key to this development, that it is a strong force in the building of a free society.

Professionals in the field of child welfare stress the importance of the educational and environmental influences during the formative years in the lives of children. They have pointed out that in very young children the factors of color, race, religion, or economic status do not create barriers to friendship. These children from different segments of our society begin to appreciate in terms of personal experience in the public schools that each of his peers has something distinctive to contribute to his growth and development. For the vast masses of American children and youth of all races and religions, national backgrounds, levels of economic status, it is the public school that prepares them for adult life and for contributing productively to American civilization.

I know that many of you educated in our public schools are grateful for the opportunities you have had to be exposed to the variety of cultures in which we are so rich in this country.

It is for these reasons that we would deplore any act which would destroy or weaken one of the basic and unique institutions in our democracy. By dividing public funds, which are always likely to be limited, among diverse school systems, there will be a struggle for existing funds and a consequent reduction in quality for all.

There are over 250 different religious sects and denominations in the United States. Once the public treasury is opened for such funding as is proposed, there will no doubt be a proliferation of religious schools of even the smallest denomination or ideologies. These could not operate on optimum educational levels. According to a study made by the National Educational Finance Project (funded under Public Law 89-10) which opposes tax aid for nonpublic education, elementary schools should have 60 to 100 students per grade for optimal size and quality, and secondary schools should have at least 100 students in their graduating class.

We know that it is more costly to finance many systems instead of one. At the present time, at least 90 percent of the nonpublic schools are parochial or church related. About 75 percent of this number are Roman Catholic schools, some of the other parochial schools being Lutheran, Christian Reformed, Seventh Day Adventists, Jewish, Episcopal, Friends, Black Muslim, and secular private schools.

We must not delude ourselves as to the limited funding proposed. The goal, often expressed, is parity with the public school system.

On the topic of problems of desegregation, what has been the case in the last 25 years? For a variety of reasons there has been a marked exodus from public schools to the religious and private schools, the most important reason being the U.S. Supreme Court decision that education could not be equal if separate.

In New York City, every effort toward desegration in the public schools resulted in the increased growth of the nonpublic schools, of which 90 percent is white. For the last few years, there has been increased enrollment in Jewish day schools and in nonsectarian private schools. It is only the Roman Catholic schools that are faced with lower registration and correspondingly rising costs. Their forebodings of the necessity of mass closings because of financial straits do not seem to agree with two important studies made recently.

Governor Rockefeller's Commission on the Quality, Cost, and Financing of Elementary and Secondary Education (more commonly known as the Fleischmann Commission), after a study of 2 years, asserted that the panel was opposed to public support of nonpublic schools, and forecast that by 1980 the enrollment in Catholic schools (84.5 percent) would fall by 55 percent.

The report further said that the decline would be caused by falling birth rate and changing parental tastes, and that it would occur "even if State aid were provided at a level which would eliminate the need for all tuition payments." The average tuition payment in elementary grades, where the projected Catholic school decline by 1980 is more pronounced, was found to be only $50.

There will also be a decline in public school enrollment because of the falling birth rate, so that children from closed nonpublic schools will have no problem finding places. Some States have made provisions for supplementary funds to take care of the additional costs in the event of mass closings and to get authority to lease or purchase the school buildings if available. The University of Notre Dame study indicates declines in Catholic school enrollment "were caused by geographic movement by families and changes in taste."

All too often people think that stressing the importance of public school education, especially in a democracy, is somehow critical of religious training. This is not and should not be the case. Religious teaching has its important place in the lives of all of us and certainly parents should have the freedom to impart their own religious preferences to their offspring. This can be done in many ways without weakening the values of a nonsegregated education. I have more confidence in the ability of religious schools to maintain themselves than they have indicated. Those parents who wish to provide religious education for their children in a parochial school setting will find a way to do so in spite of the cost. Those who cannot may well decide that church priorities need to be changed.

By the very nature of the system, private schools, whether religious, ethnic, or elitist in some particular aspect are divisive and segregated, even if not by intention.

Parochial schools are segregated according to religious beliefs and backgrounds, and indirectly by nationality and class. According to the National Catholic Educational Association, 97.3 percent of all students in Catholic schools are Catholic. Jewish day schools have only Jewish children. In Lutheran and Adventist schools, enrollment is at least 90 percent Lutheran and Adventist. The same sources note that only 4.8 percent of Catholic school enrollment is black—and this is a national figure—while public school enrollment is 14.5 percent black. In New York City, 62.2 percent of enrollment in public schools is nonwhite. It is significant that the U.S. Commission on Civil Rights pointed to the private and parochial school enrollment as a major factor in the increasing concentration of blacks in the city school system.

It is not only as to race, religion, and nationality that nonpublic schools discriminate. Any public schoolteacher will tell you that near the term's end he will be getting transfers in from parochial schools of students with behavior problems, emotional or mental problems. Public schools by law may not select their students. Nonpublic schools have no hesitation in expelling those youngsters with whom they cannot or will not cope. And so, if this trend continues, if financial inducements are provided to encourage enrollment in private schools, our public schools will become the dumping ground for the misfit or the disadvantaged—the school not of choice but of necessity for reasons of economic need, intellectual limitations, or emotional problems. Segregation, whether by race or religion or economics, will not serve our democratic society.

It is difficult for me to see justice in an act which would use public funds to destroy our precious public school system. In Holland, the assumption of support for confessional schools resulted in the reduction of their public school enrollment from 80 to 18 percent. Almost the whole of society is organized along the lines of the three school systems—Catholic, Protestant, neutral. The experience in parts of Quebec shows the same result.

In the South, we saw that tax support of two separate school systems based on race results in inferior education in both systems.

What is even more serious is the possibility of a fragmentation of our society on religious and ethnic lines. For almost 200 years we have been spared the horror of Northern Ireland because of the precious heritage of religious freedom and the wall of separation between church and state. We have not had religious political parties.

The Supreme Court in its last decision outlawing public aid for parochial schools spoke of the guidelines to be used to help determine this separation between church and state as being a consideration as to whether an impermissible entanglement between government and religion existed, and spoke of the dangers inherent in political religious divisiveness. We can ill afford this splintering of our society when we so desperately need to be unified.

The tax credit proposed as an aid to parents whose children attend nonpublic schools we believe to be in the same category as all other aid proposed which has been ruled unconstitutional. Tax credit or grants to parents who pay no income tax for tuition paid in nonpublic schools still finds its way into the treasury of church schools and thereby fulfills the mission of the school and church. Thomas Jefferson's famous statement is as true today as it ever was: "To compel a man to furnish through taxation contributions for the propagation of religions in which he disbelieves is sinful and tyrannical."

In summation, we in the Ethical movement believe that our religious liberty is dependent on the guarantees in the first amendment and in a strict separation between church and state.

We believe that the tax credit for tuition paid to a private school would foster and accelerate racial segregation and religious divisiveness. To a large extent the increased burden on private schools is the result of an influx of those fleeing desegregated schools and only secondarily, at best, interested in private or religious training. To that extent, this proposed legislation will promote segregation.

We believe that this act would be the first step in the ultimate destruction of the public school system as we now know it.

We believe that religious-political divisiveness would be created.

Lastly, we believe that all Federal funds should be used to improve the public school system so that it can continue to be the bulwark of our democracy.

Mr. **Green**. Thank you, Mrs. Goldblum.

Congressman Schneebeli?

Mr. **Schneebeli**. Mrs. Goldblum, I think yours is the first testimony we have received to date in opposition to the legislation we are considering.

Mrs. **Goldblum**. Right.

Mr. **Schneebeli**. You have documented your statement very well. I see you are quoting from the Rockefeller Commission study. I am sure your testimony will be used in consideration of this problem. I thank you very much for coming.

Mrs. **Goldblum**. Thank you.

Mr. **Green**. I would like to ask you a few questions. You say several things here, and now I am quoting you:

"We know that it is more costly to finance many systems instead of one." I know there was a study done in Philadelphia—in fact, the next witness is the gentleman who headed up the panel that did the study. The diocese and the surrounding area opened up its books to an independent group to do a study of the financial situation of the Catholic parochial schools.

One of the interesting things about the study was that it indicated that it cost over twice as much to finance the education of a public school child in the Philadelphia area as it did to educate a child in the archdiocesan parochial schools.

I wonder whether or not, dollar-for-dollar educationally, if some assistance to the really beleaguered parochial schools there, whose fate I believe to be inextricably bound with the public schools in terms of finances, would not in terms of savings, dollar for dollar, be wise.

Mrs. **Goldblum**. There might be a short-term savings. My statement, of course, applied to the condition which I see would arise when we would in effect, once the door has been opened, provide full funding for all private nonpublic schools. Then, in a sense, Government would be in a position of financing two or three or four or maybe a dozen systems. You would have the smallest denomination start up a school, and then you are going to have this business of "how much per capita?"

So that, taking any one State, or even nationally, it is not just a matter of financing a nonpublic school system, but you will be financing maybe 250 different school systems. Then the ratio will definitely come up.

Now at the present time, of course, in New York City, for example, it costs $1,000 per child to finance a public school child.

Mr. GREEN. That is about what it costs in the city of Philadelphia, yet it costs $478 a year for a nonpublic school child. That is less than half.

Mrs. GOLDBLUM. When we figure the tuition cost of a child that attends a Catholic parochial school—I mentioned the $50 figure, which is the elementary school figure—the actual cost is much more than that to the church. That is borne by grants——

Mr. GREEN. My point is that the total cost of educating a parochial school child in Philadelphia is less than $500.

Mrs. GOLDBLUM. That will increasingly decline. Insofar as the Federal Government is going to start supporting it, it will decline and the Government will support a greater amount of it.

Mr. GREEN. I question that judgment. It could be obviated by a maintenance-of-effort requirement. You have expressed a very great concern, and I think this committee has to be extremely conscious of the fact that we should create no system in this country which will promote a turning back of the clock in the area of civil rights. This committee had better be very careful in consideration of this matter, which I happen to generally favor, I might add, in disagreement with your point of view.

But your point that there is a possibility here that we could be turning back the clock—which is not the way you put it—in the area of civil rights, is a real one and this committee should be conscious of it.

Mrs. GOLDBLUM. May I say something about civil rights? It is not only that, but it is in the whole area of dividing our society into the basis of religious or ethnic grouping which is so repungnant to our democratic way of thinking. We think of a person being a citizen, and not a Catholic, Jew, Protestant, or what.

The experience in Holland, and I have talked with many of them, is an example. We have had this occasion because part of the International Humanist and Ethical Union is in Holland. It is horrifying to us to find that all social services are based on religion. If you can't find your place in any one of these three groupings, then you had better get there even if you don't like it.

I believe we have to think of the long term result of legislation of this kind and not just the fact that we are plugging up a hole now that exists.

Mr. GREEN. I think conceivably one of the great problems from a historical point of view in this area, and once again harkening back to Philadelphia—not to be parochial, but it is the area I am most familiar with—but initially many of the parochial schools were created in the city because the public schools were insistent upon another religious belief.

Many of the schools founded in this country were founded because people could find absolutely no haven, no place they could have the kind of expression they wanted.

The homogeneity you seem to desire I understand, but I wonder how far we want to carry this homogeneity. You know, I think that this country's greatness is based on the fact that we have differing beliefs and we are free to have those beliefs, to exercise them, and to pursue them.

Many parents in this country have supported the public school system with their taxes, and completely supported without complaint for years a parochial school system. They really have paid double down through the years.

I don't think the parochial schools are some thin disguise for an Apostolic mission. They have been performing the full function of educating children.

Mrs. GOLDBLUM. May I say something on this double taxation? I don't know how we can really consider it a taxation. They are not being taxed.

Mr. GREEN. I understand that.

Mrs. GOLDBLUM. They are not being taxed.

Mr. GREEN. They are paying twice.

Mrs. GOLDBLUM. There are private schools that on the basis of the issue involved, whether you want to call it ethical, moral, or what, who have rejected public funds for this purpose. The ethical culture schools have just really not accepted a $40,000 to $50,000 grant that would have been permitted, because it felt that it had no business receiving public money for a private school.

Mr. GREEN. In the next paragraph, you say:

> What has been the case in the last 25 years? For a variety of reasons, there has been a marked exodus from public schools to the religious and private schools.

Now that does not seem to be the case in the city of Philadelphia. I think there has been a marked exodus from the parochial schools to the public schools.

Mrs. GOLDBLUM. It has not been so in New York, it has not been so in others. I am not well enough informed——

Mr. GREEN. Your statement, I think, is wrong.

Mrs. GOLDBLUM. I think if you study the figures in New York State you will find this to be true. Of course, where some of this is true has been in the suburbs. Some of it maybe was not fleeing from segregation; it was fleeing perhaps for lack of quality.

On that ground, if we have any public funds to hand out they should be handed out in the direction of our public trust, which is public education, and strengthening and improving the quality of our public education.

Mr. GREEN. If I may continue, you say:

> It is only the Roman Catholic schools that are faced with lower registration and correspondingly rising costs.

When I came to that point in your testimony, I thought we should also allude to something you said prior to that or after that. When you say "only the Roman Catholic schools." Somewhere else in your testimony you state that 75 percent of the nonpublic schools in this country are parochial schools. These Roman Catholic schools are no small segment of the situation.

Mrs. GOLDBLUM. What I mean to say, in general, is the private school, the nonsectarian private school, has been increasing in enrollment. The Jewish day school has been increasing. More and more children are entering the Jewish day school.

There has been, however, and this is nationally, a lowering registration in the Catholic schools, and the reason for it, as I tried to indicate, from the two studies that have been made, the Fleischmann Commission and the Notre Dame study, was not primarily because of financial reasons but because of changing parental tastes.

The forecast by this panel, which has certainly made a very exhaustive study, is that this is going to continue.

Mr. **Green**. I would seriously question whether the decline is due to parental taste. Once again going from the specific to the general, which I understand is not necessarily valid, I am just looking at my own city, where I think I understand the problem, if there has been a decline, it could be because of movement from the city in some instances; but I really think one of the chief reasons now why there is a decline in parochial school enrollment is because of the financial situation.

I think that is going to continue to get worse. If you were to close the parochial schools, which I no longer think is some kind of debater's trick but a very real threat with catastrophic economic consequences for the public schools. This morning's Philadelphia paper today indicates public schools are just about ready to close in Philadelphia because of financial reasons. It is a very serious situation.

I will say this. I do want to thank you for coming. I am going to yield to Congressman Carey. I think you are an articulate spokesman for your point of view and I want to thank you for testifying.

Mr. **Carey**. Thank you, Mr. Chairman.

I wish to welcome Mrs. Goldblum in behalf of the American Ethical Union. You make cogent points. For the accuracy of committee records, I want to make it clear that the study to which you allude, the Fleischmann study, is a preliminary study; it is not final. There is a minority report to this study which disagrees with a number of its conclusions.

The study is a projection of what may happen, given the factors you cite—parental taste and so forth. The public policy of the State of New York, even in view of the preliminary study, was to extend certain benefits to the nonpublic schools, for example, the maintenance of records. Some of these benefits have been found to violate the State's constitutional prohibition against such aid, and therefore the public policy has failed.

But I think that in your statement, which, as I say, is a good contribution, you do seem to reach some conclusions that are in themselves conflicting.

When you talk about a marked exodus from public schools to religious and private schools, this disagrees entirely with the decline in enrollment in the private schools. If there are more children going from public schools to the private schools, how do you account for the decline in enrollment in the religious private schools?

Mrs. **Goldblum**. The projected decline of the Commission was that this would happen by the year 1980, when there would be the 55-percent decline.

Mr. **Carey**. I am talking about the marked exodus from public schools to religious private schools. Where is that taking place in New York?

Mrs. GOLDBLUM. There again, I am talking about New York City. In New York City, immediately after the Supreme Court decision, we found that every attempt that was made by various public schools to desegregate found an increased enrollment in the adjoining private schools of those children who left the public schools because they were trying to avoid desegregation.

Mr. CAREY. I would have to resist that judgment as a matter of fact. As a New Yorker, I would have to say that the judgment that the people of New York City went to private schools to resist integration is at odds with the facts, because there is increased enrollment in the public school sector, even with a fairly stable population. The parochial schools of New York City, as elsewhere, have shown a decline in enrollment.

So you will have to show me where those children are going to school. The facts show that the nonpublic school has a lower enrollment and the public school enrollment is higher in New York City since 1954. I don't like to see the committee misled, and I am afraid this is misleading.

Mrs. GOLDBLUM. There is a falling off in various sections of New York City where public school enrollment has declined. There are thousands of empty classrooms.

Mr. CAREY. This is quite true, because 1 million middle-income people moved out of New York City to the suburbs and 1 million poor people moved in. They are not moving into the areas of middle income. That is why the classrooms are empty. They did not go to private schools; they went to Nassau County and Westchester County and New Jersey to other public schools.

Mrs. GOLDBLUM. Some of them went to private schools.

Mr. CAREY. Yes, but that is not what your statement said. Your statement did not account for the suburban exodus. It said they went to private schools as though private schools were the villains. It is an exodus of people from the inner city to the suburbs.

The President said, and I do not agree with him, that one of the ways to hold the inner city together was to allow parents to have options within the inner city which would hold them there and not have the inner city middle-income parents move to the suburbs so that we would have the tipping of the inner city into a more black and more Puerto Rican majority with the white element lost from the city.

Now that is a social phenomenon we have to recognize. The President disagrees. He seems to think that having options for those parents within the city would help to hold them in the neighborhoods.

Mrs. Griffiths made the same point with regard to Detroit this morning.

Mrs. GOLDBLUM. Mr. Carey, I would like to point out that in your own Borough of Brooklyn where there was an attempt made by the board of education to pair two schools for the purpose of desegregating them, there was immediately an increase in the enrollment in the adjoining private schools. I am sorry that I don't have those particular figures, but they are available.

Mr. CAREY. I can cite them. I am glad you bring that one up. That was pairing of Public School 5 and Public School 6 in Brooklyn Heights. They paired two schools on opposite sides of a thoroughfare which is very difficult for the children to travel, a very dangerous passage for the children. It was a bad pairing.

At the same time, the school that you are talking about was not even in existence. It is St. Ann's Episcopal School. It was founded long after the pairing. St. Ann's Episcopal School is mainly peopled by high-income families. According to most recommendations there would not be available to them the resources of this bill.

So, the phenomenon you discuss here has little or nothing to do with the exodus from those public schools. As the matter of fact, in the very area you mentioned, two parochial schools closed, the Assumption School and Victory School.

Mrs. **Goldblum**. Why did they close? Some parochial schools closed for purposes of consolidation, which takes place in public schools, too.

Mr. **Carey**. They closed for lack of financial support in the community, and the community itself had an urban renewal project known as Cadman Plaza that took away the one-family and two-family residences. You should know the facts on that particular site.

Mrs. **Goldblum**. Those schools you mentioned are not the schools I was thinking of. Since I do not have my figures with me, I am not going to contest that. I am hoping when Mrs. Flast is here she will have the figures.

Mr. **Carey**. She is a very well respected authority.

Mrs. **Goldblum**. Yes. She will have those figures of the time I am talking about. Actually, I want to say this, that my main thrust is really, as I see it, that this act will be the opening wedge for destruction of our public school system.

Mr. **Carey**. We have had aid to the nonpublic school student, as a matter of fact, since 1965. The Elementary and Secondary Education Act has made provisions available for children in nonpublic schools in the form of textbooks, aid to the handicapped, a variety of aids that I could specify, including Headstart, preschool programs, and so forth.

None of these in 7 years has had any destructive effect upon the public school system.

Mrs. **Goldblum**. We think some of it does. I do, personally. I think that the textbook loan does. I think that the textbook loan—it is true, it has been ruled constitutional—but I think that the last word has not been said on that.

Mr. **Carey**. The last word has been said.

Mrs. **Goldblum**. Has not been said on the textbook situation.

Mr. **Carey**. If you can show me where the loaning of textbooks to any of the children in the nonpublic school system has had an adverse impact on the public school system, I would like to know about that.

As author of that bill, I can tell you every librarian association in the country, every leading expert in education has found this to be one of the most constructive efforts ever made by Congress to bring up reading levels and improve the reading materials for all the children in all the schools.

You are the first one I have heard who opposes on educational grounds the loan of textbooks to children.

Mrs. **Goldblum**. Well, not on educational, but religious grounds in that they were supposed to be secular, and many of them are not.

Mr. **Carey**. Well, the study you referred to on that one has long since been exploded. The only textbooks available to the children are textbooks approved for public schools. I think you should be careful with the facts.

Mrs. **GOLDBLUM**. I am not qualified to go into details.

Mr. **CAREY**. I agree with you.

Mrs. **GOLDBLUM**. I am only touching on some things. Insofar as the Elementary and Secondary Education Act, as you know there has been a difference of opinion as to its constitutionality. I don't know what it does in its ultimate impact or harm on the public school system. I believe that any aid that is given by way of public money to private systems thereby endangers the public school system.

Mr. **CAREY**. I suppose that would make it true, then, of the Higher Education Act, where all the private universities share equally with the public universities?

Mrs. **GOLDBLUM**. No, I take a different position on that, and I think the Supreme Court does, too, as was indicated in its decision.

Mr. **CAREY**. Why?

Mrs. **GOLDBLUM**. Because there we don't deal with the impressionable child, where we feel we are really teaching, you know, religious tenets, and where you have more of an independent child, a more mature child, who is able to think on his own. We believe that Government has no business supporting in any way religious institutions.

Mr. **CAREY**. The point you made is that the dedication of any public funds to private institutions weakens the public institution. I said: "Why does that not apply to the higher education sector?" You went into the question of indoctrination of religion.

Mrs. **GOLDBLUM**. I am talking about elementary and secondary schools.

Mr. **CAREY**. That is not the principle you addressed. You said that any dedication of public money to private institutions weakens the public system. We have public universities and private universities. I am trying to find out why that principle does not hold at the higher education level without regard to what is taught in the curriculum and so forth.

Why does it not weaken the State universities?

Mrs. **GOLDBLUM**. Well, I am going to call on my statement. I don't know that it doesn't weaken it. I am really discussing this in terms of the way we feel about the separation of church and state. We feel it is not quite so oppressive in the case of the university student as it is with the elementary and secondary student.

Mr. **CAREY**. I am completely dedicated to the principle of separation of church and state in higher education and in elementary and secondary education. I will defend it in every regard. But I see no impact on that principle in assisting a child in school.

Thank you, Mr. Chairman.

Mr. **GREEN**. Thank you again.

There is a rollcall going on at the moment. It is almost completed. I have to vote. Have you voted, Congressman Carey?

Mr. **CAREY**. No, I have not.

Mr. **GREEN**. I am going to recess the committee for 10 minutes and then return.

(Brief recess.)

Mrs. GRIFFITHS (presiding). Mr. Gurash.

We are very happy to have you with us, Mr. Gurash.

You may proceed as you see fit.

STATEMENT OF JOHN T. GURASH, CHAIRMAN, ADVISORY COMMITTEE ON THE FINANCIAL CRISIS OF THE CATHOLIC SCHOOLS IN PHILADELPHIA AND SURROUNDING COUNTIES; ACCOMPANIED BY JOHN F. O'LEARY, JR., AND DAVID A. TIERNO

Mr. GURASH. My name is John T. Gurash. I am chairman of the board of INA Corp., a financial services company whose principal subsidiaries are the Insurance Company of North America and the investment banking and brokerage house of Blyth Eastman Dillon. I am also chairman of the advisory committee on the Financial Crisis of the Catholic Schools in Philadelphia and Surrounding Counties.

I have with me on my right Mr. John F. O'Leary, an economist with INA, a lecturer in economics at the Wharton School and former economist with the Federal Reserve Bank of Philadelphia, and Mr. David A. Tierno on my left, a principal of Arthur Young & Co. He is a certified public accountant in the Commonwealth of Pennsylvania. These two gentlemen headed the task force that led to the development of the data that creates the foundation for the report to which I refer.

Let me begin by expressing my gratitude for this opportunity to testify on the complex but critically important question of Government aid to nonpublic schools. As a result of the work of my own committee, I am well aware of the many difficult facets of this issue, and I sympathize with your committee's efforts to arrive at a solution which will be equitable to all, beneficial to the Nation, shaped to our traditions, and acceptable to the majority of our people.

The advisory committee of which I am chairman is composed of prominent businessmen, labor leaders, top civic figures, minority group activists, and school authorities. Among its members are the heads of some of the Nation's largest corporations. Two-thirds of the committee members are Protestant, Jewish, or of no religious persuasion, and some of the non-Catholics are nationally known laymen in their faiths.

The committee came into being as a result of a letter from John Cardinal Krol, Archbishop of Philadelphia, on July 22, 1971, in which he asked me to select and head such a group. It was the Cardinal's conviction that an objective study of the financial problems of the Catholic schools ought to be conducted by an impartial, blue-ribbon group, representative of the entire community—a committee whose findings could not be considered biased or self-serving.

For such a study to be meaningful, it was essential that the committee and its staff have free access to information of all kinds, including not only enrollment and financial records of the Catholic schools, but also statistics on parish finances, on novitiates and seminary applications, and on many other related factors. It took courage and resolution to open such records for examination by a nonsectarian committee of laymen, but Cardinal Krol took that unprecedented action. As a result, the committee, after many months of work, was able to produce a report which is, we believe, the most comprehensive survey of this matter ever made anywhere in the United States.

Although our study focused on the Philadelphia metropolitan area, we also took a cursory look at conditions elsewhere throughout the country, and we consulted with a number of national experts in the field of education. We found, in effect, that Philadelphia was a microcosm of the country as a whole, in most respects, as far as this problem of the non-public schools was involved.

We also discovered that the financial problems of the nonpublic schools could not be viewed apart from the financial problems of the public schools. The fortunes of the two are interrelated inextricably, so that what affects the one cannot help but have an impact—and often a very strong impact—on the other.

Our study found that the parochial schools are already operating at a critical deficit. In the Philadelphia metropolitan area, this deficit is running at an annual rate of about $4 million, and it is climbing. There is no question that the deficit will continue to grow during the next few years. By 1975, the cumulative deficit of the parochial schools in the Philadelphia area will probably amount to more than $55 million. This increase is caused by higher costs, reflecting rising teacher salaries, a decrease in the availability of teaching nuns and declining student-teacher ratios.

Economies are not the answer, for the parochial schools even now are being operated at a much lower cost than the public schools. Here is one dramatic illustration of this difference in cost: our committee found that 3 years from now, in 1975, the cost per student for parochial schools in the Philadelphia archdiocese will be $478. But right now, in the school year that ended in June, the cost per student of operating the Philadelphia public schools was estimated at $1,027—more than twice as much as the figure for parochial schools 3 years from now In 1975, that figure will rise to approximately $1,800.

We also found that the financial crisis of the parochial schools was already having an impact on the public schools. Students have been shifting from the parochial to the public schools in recent years, and this movement is projected by us to continue at a minimum rate of 5.7 percent compounded annually—or, more likely, at a substantially accelerated pace.

Assuming that the minimum rate of transfers continues, this will impose an additional burden on the public schools of the city of Philadelphia alone—not counting the suburbs—of $7 to $8 million in the coming school year, of $16 to $19 million in the following school year, and of $28 to $37 million in the 1972–75 school year.

It must be borne in mind that this additional burden will be thrown on a public school system which is already operating at a deficit of roughly $50 million a year, with the cumulative deficit of the city's public schools projected to reach $400 million by 1975. Indeed, the plight of the city's public school system is so grave that the school board is making plans to close the schools early, long before the usual closing date.

Everywhere in this great country, from Oakland, Calif., to Oelween, Iowa, to Boston, Mass., parochial schools are gradually closing down.

Parochial schools have been closing at the rate of 400 per year—more than one a day—and the pace appears to be quickening.

The significance of this trend for the public school systems of the United States is inescapable. If all the Catholic schools in this country were to close, the national operating budget for the public schools would have to be increased by some $3.2 billion per year, and the capital budget for public schools throughout the nation would rise by some $10 billion per year. Adding to such a calamity would be the fact that the heaviest part of these additional burdens would fall on the public school systems of our cities, most of which are already in dire straits quite apart from their educational deficits.

More than money is at stake, for the parochial schools have been making a unique contribution to American life. The educational diversity which they represent helps all of our schools. As a non-Catholic critic, James Gollin suggested in his recent book, "Worldly Goods," perhaps the non-public schools, "just because they are private, are doing things and trying things that public schools cannot do and dare not try to do." He is inclined to believe that "parochial education possesses an intimacy, a vitality, and a humanity of its own." And he concludes that "we"—that is, the public at large, predominantly non-Catholic—"should offer our support to the Catholic schools. They * * * are the part of the church non-Catholics need."

This question of the survival of the parochial schools is not a partisan matter. President Nixon, applauding the stress that the nonpublic schools lay on moral, spiritual, and religious values, has expressed dismay at the number of school closings. "We must stop that trend and turn it around," he has said. "And you can count on my help in doing just that."

And Senator George McGovern has written to me that he thinks "that we can and should find a formula for aiding the parents of children attending nonpublic schools that would be consistent with the important constitutional principle of the separation of church and state."

On my own behalf, I should like to make clear that I appreciate the difficulties of the constitutional question which is involved, and I understand the legitimate concern that the barrier between church and state not be breached.

But changing times bring new perspectives on many things, even on the Constitution, as we have seen often in the past—in new outlooks on labor organizations, on Federal powers, and most recently, on civil rights issues. I hope and believe that the dimensions of this problem of the survival of the nonpublic schools have been coming into focus in the last few years, and that we Americans may be ready to view the church-state issue, in this one application, in a fresh light.

After all, what we are talking about, in this pluralistic society of ours, is not really a "Catholic problem" at all, but a dilemma of our total community. Americans of every faith, and of none, have a stake in its solution, for in a democracy the education of every child is the concern of every citizen.

It is my hope that your deliberations will result in a legislative measure which will help to preserve the nonpublic schools of our country, and thus sustain and protect that diversity which adds so much to the texture and the quality of life in America.

I thank you for the opportunity to appear here on behalf of our committee.

Mrs. **GRIFFITHS.** Mr. Green would like to inquire.

Mr. **GREEN.** I would like to take this opportunity first, not to inquire, but to commend you for coming here today, to commend you for the contribution that you have made to all the schoolchildren of Philadelphia by taking your own time to assist in the supervising and the preparation of this study, "The Financial Crisis of the Parochial Schools in Philadelphia and Surrounding Communities."

I am in complete agreement with you that the fate of the public school is tied to the fate of the parochial school child. I am aware of the financial crisis that exists just educationally in the city of Philadelphia. I think that you and your committee have made a tremendous contribution to all of us who live in Philadelphia.

If I can be presumptuous enough, on behalf of all the people of Philadelphia, as a member of this committee, I thank you for the contribution you have made today, and the contribution of your time and effort and energy that you have put into this report.

Thank you for coming.

Mr. **GURASH.** Thank you.

Mr. **PETTIS.** I would like to join my colleague in commending you for this very excellent public service effort that you have made today, and I would like to ask a question, if I may.

Mrs. **GRIFFITHS.** Certainly.

Mr. **PETTIS.** I know that many of the parochial schools are closing. After a school closes, it is very difficult to get a school started again.

Could you give the committee the benefit of a good case history of a closing of a parochial school and what happens to the institution physically as well as what happens in the community as far as the public schools are concerned?

If you are not prepared to do this, maybe you might prepare something for the record. We have not had any testimony to that point, other than generalizations.

Mr. **GURASH.** Congressman Pettis, I would like to ask Mr. Tierno or Mr. O'Leary to comment on that, because they did in-depth work in this area, concerning certain parochial schools, and may be familiar with a case history.

Mr. **O'LEARY.** I can refer specifically to cases that happened. One was in New Jersey, in Camden, one in Haddonfield, two very different types of schools. The net result was the same.

One, in Camden, was essentially a school which, in a regular 4-year curriculum, emphasized commercial and secretarial skills. It drew students from all over the county, and when it closed, had an enrollment of 243. It is thought that many of these students will be absorbed into other Catholic schools, although some will go into the public school system.

The other, in Haddonfield, was a small, private, reasonably expensive girls' school which closed mainly because of declining enrollment and financial pressure. It had approximately 200 girls in 4 years of high school. I would expect some of these students to be enrolled in a nearby boys' prep school, which had coincidentally decided to admit girls, and the others to go either into parochial or local private schools or local public schools. It drew from several communities, so the impact of the closing was relatively minor in any one community.

In Philadelphia itself, three parish schools closed in June: St. Theresa, with 175 pupils; St. Catherine, with 125 pupils; and St. Alphonse, with 130 pupils. While these children were assigned to other parochial schools in the area, we don't know how many, instead, have entered the public school system.

The reason I bring that up is that there has been a significant vocal reaction from the community, from the Catholic community, and, as I understand it, and I just heard this yesterday, they had support in one community where they have, in fact, brought suit against Cardinal Krol for closing down the school and asking that the school be reopened.

This gives you sort of the flavor without going into detailed numbers of what happens.

Mr. GURASH. This is a specific instance of what just occurred. As I recall, the deficit in that particular parish and its school was in the area of $150,000 or $160,000 a year, which was being subsidized by the archdiocese. The decision was made to close it. Now the Cardinal is being sued.

Mr. PETTIS. I wonder if it would be possible to supply for the record—I don't suppose you have this with you today—at least an estimate of the number of parochial schools that have closed in the last couple of years that may be typical of what you have been talking about, or maybe not typical in that fashion. We have had no testimony to date in terms of the numbers of schools that are closed, or the value of the capital investment of those institutions.

You have made a good case, and I am certain that what you have said is true, that most of these young people, half of them fall back on the public school system at a cost more than double what it is costing the parochial schools to educate them.

But I think that is not the only loss. I think we have a loss here in terms of a capital investment in institutions. I would like to know what happens to these physical plants, other than the two cases you have given, and the amount of money involved in these institutions.

Mr. GURASH. We will develop in detail a case study on it and submit it to the committee.

I think you will find that what happens is that the students of a closed school mainly go to public schools. Some of them probably go to neighboring parochial schools.

The physical plant is there, and it is either a valuable piece of property, or it certainly is a one-purpose piece of property. If the land happens to be a valuable piece of land, then it may be all right. But it may be just something that represents a significant drag on the archdiocese or the parish.

Mrs. GRIFFITHS. I would like to know the reason for the difference between the parochial $400 and the public $1,000. Was it due to administrative cost in the public system? It was not that they were paying the teachers more, was it?

Mr. GURASH. No; it is a variety of things. Obviously, it goes to the heart of the problem.

One of the problems in the parochial school situation is rising salary costs, the fact that you have fewer religious teachers. I think this was the basis for the current low cost, which is rising currently three times as fast as the revenues.

I believe also that fundamentally it is like a business that has to make a profit, and it runs pretty thin, and probably does not employ a lot of the frills that very, very wealthy businesses do.

Mrs. GRIFFITHS. I know that at one time a group of women in Detroit checked the cost of building a parochial school against the cost of building a public school. I believe the public school was two or three times more expensive. So, they ran for the school board and rereplaced the men on the board. The women were horrified, and the taxpayers were horrified with them.

Mr. Vanik.

Mr. VANIK. I would like to commend the gentleman for his statement, and ask what his reaction is with respect to the $18,000 phaseout. Does that pose any problem?

You know that the administration has recommended a phaseout of the allowance of credit for those people earning more than $18,000 a year.

Mr. GURASH. Mr. Congressman, let me respond to that in a general way.

The basis of our study——

Mr. VANIK. That was the administration's recommendation or modification.

Mr. GURASH. The purpose of our study was to endeavor to develop the commercial facts, as it were, of this problem. Our committee has yet to submit to the archdiocese suggestions for temporary solutions to this problem.

I think that the committee as a whole now is generally convinced that the survival of this system requires that there be some State or Federal aid.

Now, the statement was made earlier by a prior witness that this bill, or the bills that are under consideration here, represent full funding of the parochial school system. Now that, I think, factually, is incorrect. This committee believes firmly that the parents of students in parochial schools will have to pick up part of the tab. But the tab has gotten so big for the majority of people that they cannot afford it any more.

Now, we simply are not competent, Mr. Congressman, to comment on the benefit phaseout issue. My feeling would be yes, expressing a personal opinion.

Mr. GREEN. Would the gentleman yield for one second to clear something up where I think there is an error?

Mr. VANIK. Please proceed.

Mr. GREEN. Mr. Gurash, the witness who just preceded you is the witness that you referred to. I don't believe she said the parochial schools want full funding now.

I think she was saying this is a foot in the door, and that eventually you are going to have the parochial schools demanding full parity with the public schools. I don't think she was saying that that is what this legislation advocates at the moment.

I could see her back there shaking her head while you were talking. In fairness to her, I think what I have just said is what she meant.

Mr. GURASH. I apologize if I misunderstood her.

Mr. VANIK. I think at this point I would like to insert a comparable report in my own community. I ask unanimous consent that it might be inserted in the record at this point.

Mrs. GRIFFITHS. I hear no objection.

(The report referred to follows:)

The Cleveland Report of the Financial Condition of the Non-Public Catholic Schools of the Diocese of Cleveland

In the Diocese of Cleveland, there are 188 elementary schools and 33 high schools. The student population numbers 103,103 students. These young people and their parents are members of the greater Cleveland, greater Akron and greater Lorain metropolitan areas. Education finance problems are not peculiar to the people of the Diocese of Cleveland. The paradox of the finance problem seems to lie in the fact that the average public school district in Northeast Ohio per pupil cost is around $900.00, and the average cost for all Catholic schools is around $350.00. Both systems are having difficulties meeting their payments.

Most of the wider-circulated articles and research studies concerning or touching this matter have dealt on capital costs and overlooked the continuing operational costs. Some journalists and educators have gone so far as to say that public schools could assume the non-public school pupils without any significant cost increase. Abundant evidence shows a declining student population for both non-public and public schools. The Wright University Study this year indicates that a minimum of 118 million dollars would be necessary on a yearly basis in Ohio for public schools to operate at present level if non-public school students were to be absorbed. Each property owner in Ohio would be taxed $80–$100 per year to meet present public school programs. Any improvements or expansion in program would significantly raise that tax increment.

The education finance problem, then, is a common community problem. What the public school is doing for $900.00, the non-public school is doing for $350.00 per year at the present time. Nevertheless, at the present non-public school average rate, the Diocese of Cleveland School System is going into an average debt of one million dollars a year because of operational costs. In 1970–1971, the debt was $1,282,998; in 1971–1972, the debt was $1,301,857; by 1975, the projected yearly deficits will begin to surpass the 2.5 million dollar mark. On the other hand, if the public schools in 1974–1975 were to take on the complete program for all children in non-public schools, the yearly increase in tax monies needed based on present citizen assessment would have to be well over 200 million dollars to meet operational costs in Ohio. Capital costs would not be included in this figure.

The significant factors before us then, are, all 221 Catholic schools in the Diocese of Cleveland are chartered by the State Department of Education; all schools meet the requirement of standards as set by the Department of Education of the State; children of any race, color and creed are accepted in these schools—and to bear this out, 55% of the children in inner-city schools are not of the Catholic persuasion: these children are there because their parents have made a choice to send them. The saving to the public school financial costs in this area alone is significantly important.

The continuation of education for the nation is absolutely essential; likewise, the continuation of any non-public school or system is essential to any community. No one American can afford to be parochial in his view on the importance of education. Plurality in education, as in all of American life, has been the hallmark and the strength of this nation of peoples. The most important fact of all is that the decision by which plurality of education can endure will be made not by educators, but by statesmen.

Mrs. GRIFFITHS. Are there any questions?

Mr. CAREY. Madam Chairman.

Mrs. GRIFFITHS. Mr. Carey.

Mr. CAREY. I was absent answering the roll a little while ago. Is it my understanding that the facts and data of your report will be made available to the committee when it is in final form?

Mr. GURASH. The report is complete, Congressman Carey. I believe each member of the committee has been furnished with it. This is a 200-page report. There is a summary of the report which is in very, very brief fashion. If the committee would choose to insert this short report into the record, I believe it would have the essence of the complete report.

Mrs. GRIFFITHS. Without objection, we will include the summary of the report in the record at this point.

(The summary follows:)

ABRIDGED EDITION

THE
REPORT OF THE
ARCHDIOCESAN ADVISORY COMMITTEE
ON THE
FINANCIAL CRISIS OF CATHOLIC SCHOOLS
IN PHILADELPHIA AND SURROUNDING COUNTIES

JOHN T. GURASH
Chairman

1972

FOREWORD

This report of the Advisory Committee on the Catholic Schools which has been approved by all members, is, we believe, the most comprehensive survey of their problems — and the relationship of their plight to the difficulties facing the public schools — that has ever been made anywhere in the United States.

In large measure this must be credited to the cooperation of John Cardinal Krol, Archbishop of Philadelphia, and his aides, who gave the committee's staff unprecedented access to data of all kinds. These data included not only enrollment and financial records of the Catholic schools, but also statistics on parish finances, on novitiates and seminary applications, and many other related factors.

It took courage and resolution to open such records for examination by an impartial, non-sectarian committee of laymen, and I know that the members of the committee join me in expressing our appreciation of Cardinal Krol's determination to make full disclosure of the facts, in order to help the community to accurately assess the full dimensions of a crisis whose impact will be felt by the community as a whole, and not merely by Catholics.

The committee came into being as a result of a letter from Cardinal Krol to me on July 22, 1971, asking me to select and head such a group. In the ensuing conversations and correspondence, we agreed that an advisory committee of the kind he proposed could best serve the community in three ways:

—By bringing up-to-date and making all-inclusive a study which had been made of the public schools' financial straits, for it is self-evident that a collapse of the Catholic school system would aggravate the public schools' difficulties to an almost unimaginable degree.

—By bringing the up-dated study to the attention of various segments of the community, including civic and government leaders, the labor movement, businessmen, and others.

—By opening a dialogue where Catholic and non-Catholic alike could contribute ideas towards the solution of a problem that the entire community shares.

It was specified, however, that the advisory committee would not be asked to undertake research or submit recommendations relating to governmental aid at any level, to legislative action, or to parish aid, nor would the group engage in fund-raising appeals.

Thirty leading citizens of the Philadelphia area, representing business, labor, government, education, and the community at large, agreed to serve on the advisory committee. This group included men and women of various religious, ethnic, and social groups. It was as true a cross-section of the total community leadership as one could wish.

Under the direction of the committee, a technical staff obtained, analyzed, and interpreted the facts concerning the impact of the Catholic schools on the economic and social development of the Philadelphia metropolitan area, as well as the current financial condition of the Catholic schools and projected trends.

In addition to the records of the Archdiocese and its parishes, the committee's staff also drew upon expert advice, opinion, and factual studies from several outside, independent sources.

This report, which deals solely with the factual circumstances as they exist and are expected to develop in the months and years ahead, will serve as a basis for the discussion of the options which are open to our community in its efforts to cope with the crisis in Catholic and public education today. In the immediate future the committee will present an outline of these options to Cardinal Krol.

As the community dialogue on this problem begins, let us bear in mind that what we are talking about is not really a "Catholic problem" at all, but a dilemma of our total society, and that Americans of every faith — and of none — have a stake in its solution. The education of every child is the concern of every citizen.

> When I announced my acceptance of the chairmanship of this committee, I told the press: "I cannot prejudge the work of this committee by speaking in any detail about the future, but I can say this: An America without a strong network of non-public schools would be a nation which had lost one of its great strengths. I do not think this country can afford to let that happen."

After many months of work and deliberation, the committee as a whole shares my conviction. Now we solicit the help of the entire community in determining how our society should confront this challenge to its pluralistic strength.

John T. Gurash
Chairman

Philadelphia, 1972

SOCIAL ASPECTS OF THE PROBLEM

This report from the non-sectarian Catholic School Advisory Committee appointed by Cardinal Krol deals with the facts which the Committee finds and believes to exist with respect to the diocesan high and parish elementary schools in the Archdiocese of Philadelphia, and particularly those schools within the City of Philadelphia.

The Committee has made these findings and estimates based on lengthy studies conducted by experts in the fields of Economics, Finance, and Education, as set forth more fully in the body of the report.

I. **This report focuses mainly on the facts concerning the economic and financial aspects of education in the Catholic Schools in the Archdiocese of Philadelphia, and the facts and estimates concerning the tremendous financial impact the closing of Catholic Schools would have upon the finances of the Philadelphia Public School System. However, education encompasses other and broader factors which involve not only our economic life, but also the entire spectrum of social, political, and spiritual values that are part of the fabric of life in a free society.**

It is in that area, also, that non-public education makes an enormous contribution.

The teaching of duty, responsibility, hard work, frugality, ethics, and proper conduct are part of America's past and are desirable and important for America's future. President Nixon, in a speech on August 17, 1971, stressed the importance of the non-economic facets of education, when he said:

"In the homes, churches and schools of this nation, the character of the coming generation is being forged. We must see to it that these children are provided with the moral, spiritual and religious values so necessary to a great people in great times. As we see those private and parochial schools, which lay such stress on those values, close at the rate of one a day, we must resolve to stop that trend and turn it around. And you can count on my help in doing just that."

This Committee endorses and supports this statement by the President of the United States.

II. **Catholic and other parochial schools are committed to an educational philosophy involving morals, conduct, and spiritual as well as intellectual excellence.**

While most non-public school children are in Catholic schools, they are also to be found in schools conducted under Jewish and Protestant auspices. By virtue of the demands made upon them and the services they have provided historically, Catholic and other non-public schools are in fact fulfilling a public need. The Jewish scholar, Will Herberg, said:

"Parochial schools . . . perform a public function, supplying a large

number of children with an education that is everywhere taken as the equivalent of the education given in public schools."

Methodist Bishop Fred Corson said:

> *"They (the Catholic schools) have broadened the purposes of parochial education and have associated it more closely to a philosophy of life rather than the perpetuation solely of a sectarian position. They have encouraged a willingness to adjust to meet the changing needs and they have introduced the entire community to the contributions made by private education and the problems involved in a pluralistic society."*

III. **The American tradition of educational diversity has been a great strength to our educational system and should be preserved.**

American society needs and grows on educational diversity. Catholic and other non-public schools offer and provide an important educational alternative to the community.

IV. **The individual citizen's right to choose the kind of education which he wishes his children to have is an important right and should be preserved.**

Catholic schools provide all parents with an opportunity for expressing a freedom of choice about education. This concept of diversity or freedom of choice for parents received strong backing from the United States Chamber of Commerce Task Force Report on American Education, which pointed out that:

> *"We take this diversity for granted in scholarship, in politics, and in the abundance and variety of the commercial marketplace. Why settle for the single choice in education? . . . We think it desirable that parents have a choice of schools for their children . . . Different schools, none of them perfect, will have different combinations of strengths and weaknesses. Parents . . . should be able to choose to find the combination that best satisfies them and their children."*

Not to be overlooked in this connection is the importance of the right an individual citizen has to select for his children a combination of secular education and religious education.

V. **Catholic schools are a stabilizing factor in the life of our urban communities.**

The existence of good Catholic schools in the area acts (as do good schools generally) to strengthen a community and as a strong retentive force for the population. The schools provide a focal point for neighborhood identification, community pride, and, consequently, lend social and economic stability. These schools enhance the quality of life in our cities and suburbs. They are an important community asset, attracting and retaining in each community substantial numbers of hard-working financially stable families.

VI. **The example set by the Catholic schools of efficient and economically**

constructed and operated facilities is also important.

The spur of competition is good for all schools — public, parochial, or private — fostering constant evaluation and reevaluation of objectives, performance, use of resources and economy. The existence of Catholic schools provides for other schools another benchmark or standard for evaluating educational effectiveness and other measures of performance.

VII. **In addition to the foregoing, the resources committed to supplying Catholic education in the Philadelphia area provide this community with:**

- a quality education for one out of three children in the City of Philadelphia and comparable numbers in the four surrounding counties.
- an important source of a skilled labor force and an educated citizenry.
- a source of community and business leaders.
- a full range of student activities which provide educational, social and recreational services to the community at large and develop in the students themselves a sense of social responsibility.
- substantial facilities and personnel to undertake the education of minority groups and the poor. This aspect of social contribution of Catholic resources was prominently noted by President Nixon in his Message on Educational Reform, March 3, 1970, in which he comments:

"They offer a wider range of possibilities for education experimentation and special opportunities for minorities, especially Spanish-speaking Americans and black Americans."

These resources exist today and represent potentially a powerful instrument for social awareness and change. The resources so committed should be conserved along with our other national resources.

The community stake—both economic and social—is high. Independent of full acceptance of the benefits claimed or value judgments implied, the Catholic and other non-public schools of the Philadelphia community are a substantial factor to be reckoned with and assessed.

VIII. **There exists between the public and parochial school system of Philadelphia a large measure of interdependence, cooperation and interaction.**

The importance and significance of the close working relationship between the two systems—and their effects upon each other—were spelled out very clearly by the Philadelphia Board of Education and the Philadelphia Archdiocesan Board of Education. Calling for a joint solution to their common problems, together they stressed:

"The education of the children of Philadelphia depends upon the strength of two great educational systems: the public school system and the parochial school system. Each is essential to the welfare of the city and its children; each is fundamentally dependent upon the other. If one suffers, the other inevitably suffers."

On the following pages are the facts as to the costs associated with providing the benefits outlined briefly above. At the same time, this report identifies the best estimates the experts employed by this Committee can make as to the huge costs to the Public School System of providing those same or similar services—educational and social—should the Catholic schools no longer be able to do so.

This brief reminder of the benefits provided to the community by the Catholic schools provides a fuller context for evaluating the hard facts of the financial crises confronting Catholic schools in the Archdiocese of Philadelphia. The economic impact on the community is clear. The key questions for the community are:

Are the benefits worth the costs?
If so, how can these costs be met, and these benefits retained?

SUMMARY

Background

In his educational reform message to Congress on March 3, 1970, President Nixon stated:

> *"The non-public elementary and secondary schools in the United States have long been an integral part of the nation's educational establishment . . . supplementing in an important way the main task of our public system."*

Throughout the country, the Catholic school system constitutes the major element among non-public schools. In the City of Philadelphia, for example, 9 out of 10 children educated in non-public schools attend a Catholic school. Nowhere is the significance of Catholic schools as contributors to the education of young Americans more apparent than in Philadelphia.

The school system of the Archdiocese of Philadelphia is comprised of more than 300 elementary and secondary schools in Philadelphia and its four surrounding counties (Bucks, Chester, Delaware and Montgomery). These schools provide educational services to over 230,000 children — 75 percent of whom are elementary students. In Philadelphia alone, one out of three children is educated in a Catholic school.

While there is general awareness of the high cost of education, only recently has attention focused on the financial crisis confronting Catholic school systems throughout the nation. Several studies, including one being developed by a panel of the President's Commission on School Finance, have been commissioned to determine the scope of these financial problems. Philadelphia Catholic schools also are faced with serious financial problems. What has been lacking is community awareness of the specific dimensions of these problems.

Purpose

The purpose of this report is to provide the facts about the present and projected financial condition of the Archdiocesan School System. The information developed is intended to:

1. serve as a basis for assessing the magnitude of the financial problem;
2. establish the facts required to promote community awareness;
3. provide the basis needed to formulate and evaluate alternative courses of action which can be recommended to the Archdiocese.

Major Findings

Our analysis covered key educational and financial data from both parish and school sources. Results of our analysis may be summarized as follows:

A. **There is a deficit now.** Analysis of the most recently available data provides new and important insight into the financial condition of parishes and schools in the Archdiocese of Philadelphia. In the fiscal year 1970, all parishes combined operated at a net deficit of $1.2 million. In addition to deficits experienced in the parishes, separate accounts for the elementary and the secondary schools showed that elementary schools incurred deficits of $193 thousand, while high schools spent $804 thousand more than available revenues. The combined school operation deficit for 1970 was, therefore, $997 thousand. Thus, the total deficit for 1970 incurred by the three operations — parish churches, elementary schools and diocesan high schools — was $2.2 million. During fiscal 1971, the deficit in parish operations alone jumped to $5.1 million, a four-fold increase over 1970. Although complete school financial data is not yet available for 1971, there is every probability that the total deficit will increase, due mainly to the elimination of state aid.

B. **Deficits will continue and will grow during the next several years.** Projections covering the school years 1972-73 (fiscal '73) to 1974-75 (fiscal '75) indicate that by 1975 the cumulative deficit in the schools will reach $55.4 million. That projection represents the deficit resulting from a concatenation of most probable conditions. The deficit could be as high as $84.1 million, or as low as $43.1 million. Deficits projected for the combined elementary and secondary schools appear graphically in Charts I, II and III, respectively.

Chart I
ARCHDIOCESE OF PHILADELPHIA – COMBINED ARCHDIOCESE
PROJECTED CUMULATIVE DEFICIT – FISCAL 1973 THROUGH FISCAL 1975
($ MILLIONS)

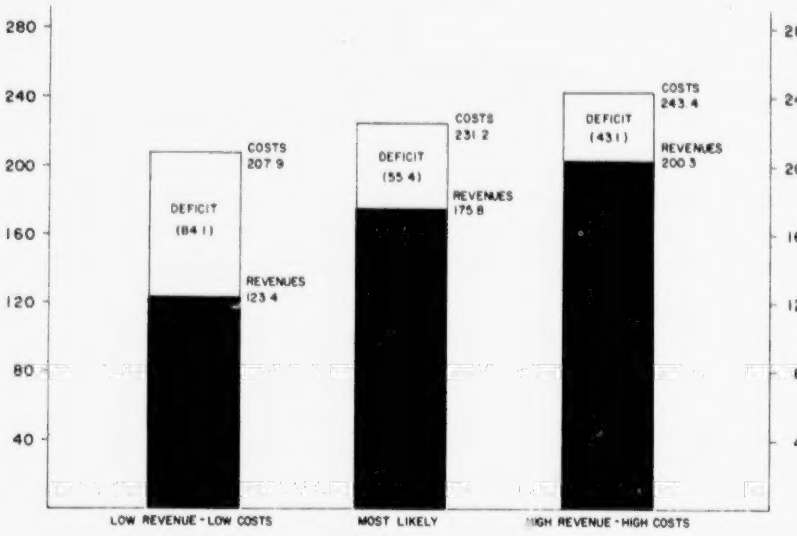


Chart II
ARCHDIOCESE OF PHILADELPHIA – ELEMENTARY SCHOOL
PROJECTED CUMULATIVE DEFICIT – FISCAL 1973 THROUGH FISCAL 1975
($ MILLIONS)

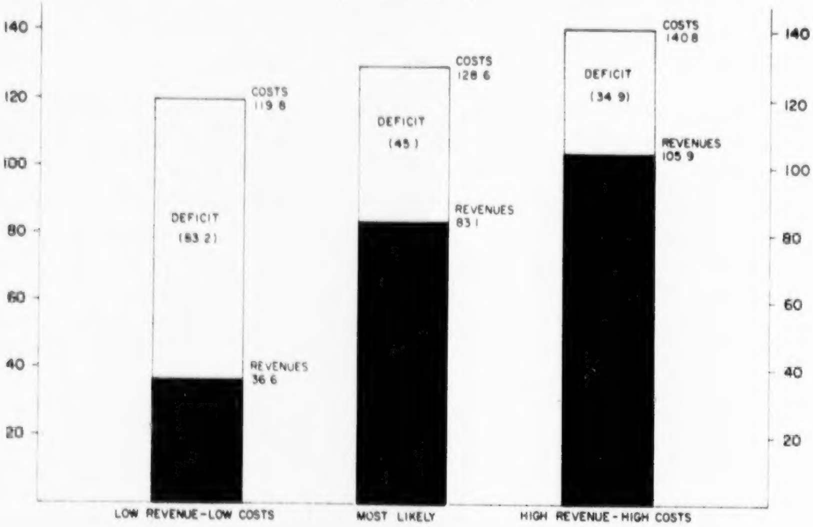
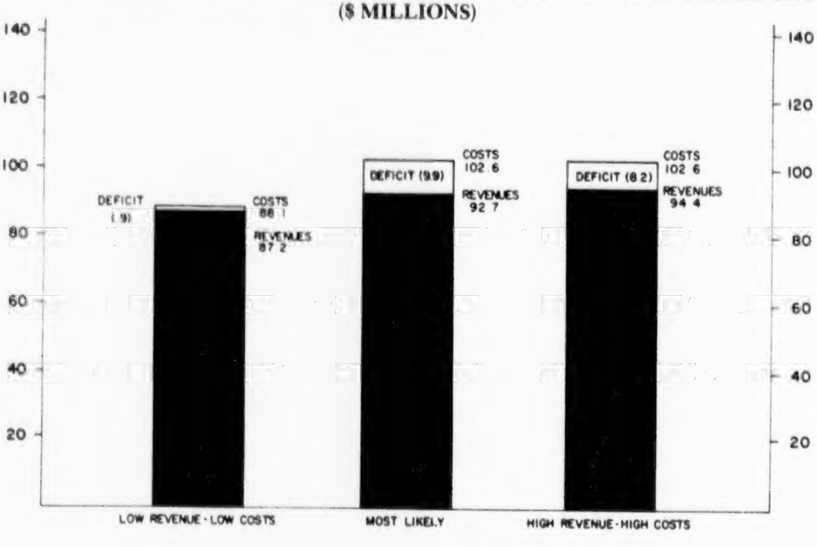


Chart III
ARCHDIOCESE OF PHILADELPHIA – SECONDARY SCHOOLS
PROJECTED CUMULATIVE DEFICIT – FISCAL 1973 THROUGH FISCAL 1975
($ MILLIONS)



Underlying the most likely cumulative deficit of $55.4 million is a $13.5 million deficit during fiscal '73, which rises to $19.0 million during fiscal '74 and climbs to $22.9 million in the school year 1974-75. During these respective years, it is expected that parishes will also be operated at combined cumulative deficits of more than $35 million, creating a projected total church and school operating deficit of $90.4 million.

C. **Revenues will fail to keep pace with costs.** A key factor determining future prospects for Catholic education is, of course, the ability of the church and schools to generate revenues sufficient to keep pace with costs. The cornerstone of the Catholic financial structure is the parishioner contributing through his church. The parish collection is the prime source of revenue funds needed to support the elementary school system, contribute financial support to the secondary schools, and provide for parish needs. Most signs point to a reduced flow of funds from the parishes. Parish revenues, derived mainly from church collections and socials, virtually stopped growing in 1971. Total operating receipts, for the combined parishes of the Archdiocese, increased by less than one percent during fiscal '71. When parish revenues cease to expand, pressures develop in elementary and secondary school budgets. **Nearly 46 percent of all parish revenues are used to support education.** Funding elementary schools takes 33 percent of total parish revenues; another 13 percent of parish revenues is channeled into the high school system from the parishes. At the elementary school level, parish funds represented 76 percent and 67 percent of the total elementary school budget in the years 1970 and 1971, respectively. Obviously, any diminution of the flow of funds through the parishes must have a substantial direct impact on school budgets. The main source of parish revenues (collections, which produce approximately 60 percent of revenues; and socials and donations, which provide another 16.5 percent of total revenues) are not growth-oriented sources. Experience in recent years indicates slower growth in revenues from the parish is likely to continue over the next four years. **If historical contribution rates are adjusted to correct for the effect of inflation, real (or price adjusted) revenues have actually declined in recent years.**

Although recent general economic conditions may account for some decline in contribution rates, evidence suggests that resumption of general economic growth may not yield an upward surge in parish revenues. Analysis of the relationships between average family contributions and average family income indicates that there is a less than proportionate increase in contributions associated with changes in income at higher income levels. The analysis reveals that the average contributor will increase his contribution more if, for example, his income increases from $8,000 to $9,000, than if his income were to increase from $15,000 to $16,000. There is evidence of a diminishing marginal rate of contribution based on income. **Thus, future growth of family income may not be adequate to generate the needed growth in revenues to cover burgeoning costs.**

Combined elementary and secondary school revenues are expected to reach $60.3 million in 1975, expanding at a compound annual rate of growth of 2.4 percent from $56.1 million in 1971-72. These revenues include funds from several sources: parish support and funding, tuitions, student fees and other sources. **But projected revenues fall far short of projected costs.**

D. **Costs will continue their upward spiral.** School operating costs, especially teacher salaries, have strong upward biases. Several factors reinforce the need to recognize the potential for explosive growth in the costs of maintaining the Catholic school system in Philadelphia. Any list of factors that will push costs up must include:

1. **Rising teacher salaries**—teacher salaries in Philadelphia Catholic schools are below national parochial averages. Additionally, unionization of lay elementary teachers and a movement toward an established level of parity even with Catholic secondary salary scales would exert heavy financial pressure on the school system. Further movement in the direction of parity of both Catholic elementary and secondary salaries to public school salary levels would create an added strain on the financial resources of the school system. Any one, or a combination, of these factors occurring would result in substantial cost increases in the operation of the schools.

2. **Declines in the availability of religious teachers**—inability to provide religious teachers to instruct in the schools would prove extremely costly in Philadelphia. The inability of the school system to avail itself of religious teachers (at relatively low salary costs) may arise because of either a lack of numbers of persons entering the teaching religious orders or by the orders themselves changing their mission. Declining ratios of religious to lay teachers translate directly into significantly higher costs — often a doubling of teacher salary costs. The availability in Philadelphia of a few large religious orders committed to teaching is both an advantage and a disadvantage: an advantage in that they lend an element of stability to costs; a disadvantage in that a decision on the part of any one order to change its mission would have a huge impact on salary costs and be a major destabilizing force. Presently, there are no indications of major shifts occurring in the missions of the large religious orders which support education in Philadelphia. However, a declining religious/lay teacher mix can be anticipated, especially in the high schools. As a result, total teaching costs will accelerate more rapidly than might normally be expected.

3. **Improving (declining) student/teacher ratios lead to higher costs** — student/teacher ratios represent one observable variable that may, rightly or wrongly, be interpreted as a measure of quality. It may serve thus as a measure of perceived quality. Further improvement in the student/teacher ratio in Catholic schools and the concomitant increased cost pressures associated with the reductions are anticipated.

Despite all these pressures, costs in the Catholic schools will remain substantially below the public school system when measured on the basis of cost

per student. To illustrate the gap, the cost per student in Archdiocesan schools projected for the year 1975 is $478 per student. Contrast this with the **current cost** (1971-72) of $1,027 per student in Philadelphia public schools which was estimated by the Federal Reserve Bank of Philadelphia.

E. **Not all schools are operating in the red.** As indicated by analysis of individual school operating statements, there are many schools which are not experiencing deficits currently. Although there is a substantial deficit overall, resulting from the fact that costs are rising at rates approximately three times as fast as revenues, this deficit is not distributed proportionately or evenly over all the schools.

F. **Catholic school enrollments declined in the last several years. Enrollment declines are projected to continue through 1975 and will add substantially, on balance, to the operating costs of the school districts in Philadelphia and surrounding counties.** The net additional cost depends upon projected rates of transfer from the Catholic to the public schools and the effect transfers will have on the amount of aid provided by the state. The cumulative impact over the three year projection period, assuming the rate of transfer implied in the basic forecast (5.7 percent compound annual rate), involves net additional costs in Philadelphia of $20.9 to $29.8 million. Additional costs for the four-county suburban area would be $24.4 million.

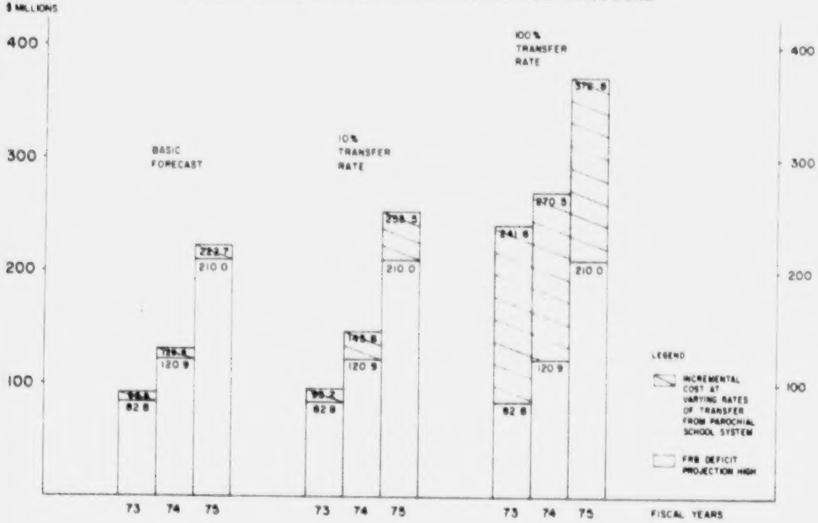
If the Catholic schools were to close down at the end of this year (1971-72), and all students were shifted to the public schools, the cumulative additional costs to 1975 would be: Philadelphia — $378.8 to $471.2 million; in the four-county surrounding area, the cost would be $274.8 million. Closing down all schools in the Catholic Archdiocese, therefore, would add an additional $653.6 to $746.0 million in total to operating costs over the next three years in the Philadelphia five county area.

Assuming a longer-term closing pattern, 10 percent per year transfer, additional costs to the public school system in the time period 1972-73 to 1974-75 would be between $140.8 and $157.5 million. This amount is net of state aid, that is, the additional costs have been adjusted to reflect the fact that transfer of students may generate additional state-aid money for the receiving school districts.

Transfer of students from Catholic to public schools may have a beneficial effect on the financial status of the public schools in that state aid may increase. Within the mechanics of the state-aid ratio, it is possible for the state-aid ratio to rise, yielding higher state aid for not only the additional students but for the total receiving student body as well. But full benefits of transfer-induced state aid are not accrued until three years after the transfers occur. Thus, for example, if the Catholic schools were to close in '72, the public schools would receive no additional state aid in 1972-73, only a partial increase in aid in 1973-74, and the full impact in 1974-75 because of the manner in which state aid is calculated.

Comparison of the cost impact of various assumed rates of student transfer on projected public school deficits is revealing. Shifts of enrollment to public schools in Philadelphia may add between $8.1 to $12.7 million to the public school deficits projected by the Federal Reserve Bank of Philadelphia, if the Basic Forecast proves accurate. Higher rates of transfer will involve, of course, higher additional costs. Immediate closing of Catholic schools (at the end of the 1971-72 school year) would add $158.0 to $162.8 million per year to the public school deficit projected by the Federal Reserve Bank of Philadelphia. A visual comparison of the effects of different assumed rates of transfer on costs is provided in Chart IV.

Chart IV
COMPARISON OF THE COST IMPACT ON PROJECTED PUBLIC SCHOOL DEFICITS OF ALTERNATE RATES OF TRANSFER FROM PHILADELPHIA PAROCHIAL SCHOOL



G. **Tuitions may provide a prime source of additional revenue to schools in the Archdiocese if, in fact, the Catholic community of Philadelphia continues to desire a viable parochial system.** There is no evidence of a strong relationship between changes in tuitions (or student fees as proxy tuitions) and declines in enrollment. To the contrary, evidence to date, and at the levels of tuitions now charged, seems to indicate that the demand for Catholic school education is insensitive to current tuition levels—which is not to say that future demand may not be. The recent increase in high school tuitions in the Archdiocese from $130 per year to $300 per year is outside the range of any prior experience here — real or statistical. It is too early to determine the full impact of that price rise on enrollments, but so far the effect appears minimal.

There is evidence, however, in the City of Philadelphia that direct charges (tuitions or student fees) in elementary schools are being paid for by an approximately equal reduction in church collections. This means that total support of the parish church-school complex is not likely to change level significantly — rather, parents will redistribute their giving, channeling funds directly into the school budget, by-passing the collection plate.

H. **Management information processes and systems are inadequate.** There is need for development of necessary information and systems for management analysis and control. Presently, ability to cope with the assessment of problems in a rapidly changing financial situation is limited. High levels of demand for sound financial and other key information are likely to be made upon the Archdiocese as the dynamics of the current financial crises unfold. Hard choices are ahead and they require hard information to manage either controlled balanced growth or decline. The current crisis does not appear to have reached the all or nothing stage. **There are options to explore.**

Perspective

The financial crisis pressing on the Archdiocesan schools, supporting parishes, and parishioners, is typical, in many ways, of the problem facing dioceses throughout the United States. In some places, the stage of the problem is more advanced — the communities involved have made their choice of how to solve the problem. Other communities are barely perceiving the existence of the problem. In Philadelphia, the problem is here and now. The time for learning the facts and making the choices is now. For the Catholic community, the time has always been now. There is, however, a new factor — a growing community awareness of the financial crisis facing non-public education, most significantly Catholic schools.

Many proposals for aid are now being discussed at the federal and state levels. There is, for example, **The President's Commission on School Finances,** including "The Panel on Non-Public Education." In Pennsylvania, there is the Mullen legislation for school aid. Legal and constitutional questions are by no means settled. There is considerable discussion about methods to finance education generally — tax credits, value-added taxes, and non-property tax bases. Many solutions have been proposed to deal with the problem facing Catholic education, and the sheer economics of education range from closing down all Catholic schools immediately, to limited consolidation or other forms of managed decline, to constructive cooperative programs between Catholic and public school officials. These programs include such cooperative efforts as shared-time, dual enrollment, programs or released time for religious education.

Summary

This Committee now has with this report:

1. The facts necessary to analyze and assess the financial crisis confronting the Archdiocese of Philadelphia school system.

2. A data base to determine and evaluate alternative courses of action for recommendation to the Archbishop of Philadelphia.

3. Information required to assess the impact of the financial problems of the Archdiocesan school system on the Philadelphia community and local public finance.

What is not available is an in-depth understanding of the attitudes of the Philadelphia area Catholic community. Attitudes reported from other parts of the country may or may not be representative of the attitudes of the Philadelphia community. To fill that gap and provide the correct perspective, a systematic program aimed at determining the basic attitudes of the Catholic community in the Archdiocese of Philadelphia must be pursued.

Mr. PETTIS. I wonder if I might ask the witness if I might have a copy of the unedited or the full text.

Mr. GURASH. Yes, you certainly may.

Mrs. GRIFFITHS. If there are no further questions——

Mr. CAREY. Just this point.

As board chairman of a corporation well known in a rather competitive industry, do you find that because you have competition, because you are in the public service sector, with a demand commodity that people have to have, namely, the spreading of the risk on coverage, you run a more efficient and competitive business because you are in the marketplace competing for trade and competing for customers? That is part of the American system, is it not?

Mr. GURASH. That is correct, one in which I firmly believe.

Mr. CAREY. You would not advocate that the Federal Government in its wildest dreams take over the underwriting of all the insurance in the country, even though some think the Government can do it more effectively and more efficiently?

Mr. GURASH. I would object, and have objected?

Mr. CAREY. Would it not appear, then, that in the field of education, where we want the very best for all of our children, that competition is a very healthy element in producing effective education, and absent some alternative system of education, some alternatives in education, and having only what I would call the State schools, only the State involved in education, that would be contradictory to all the other principles that we have adopted in this country of a private enterprise system, of options available, alternative democracy, political system, and so forth?

It would seem that the notion of an all-State system, because we could not afford any other, would run contradictory to other principles on which the country rests, whether it be in the business sector or in the field of health or in the field of housing. In all of these fields we have a healthy competitive factor, and where we do not, it seems that the public suffers.

In your estimate, as a leader in business, don't you feel that competition would be a healthy and vigorous factor in improved education?

Mr. GURASH. I feel that very, very strongly. I think that I represent the unanimous opinions of our committee, and it is so stated in the report, that the diversity of education, the competitive education system, is fundamental to our system of life, American life.

Mr. CAREY. For the record, since you did advert to the position of the President, which has been clearly and definitely stated in Philadelphia, where I think he made his statement of support for this type of aid, you also referred to a letter you received from Senator George McGovern.

I am glad you made this reference in your statement, because I read an editorial in the Christian Science Monitor to the effect that this committee considering tax credits for nonpublic school tuition and that the President was supporting this idea, and commended Senator McGovern for being against that position.

I have checked with the McGovern people. Your statement is accurate, and he has indeed publicly endorsed the Ribicoff bill in elementary and secondary education, which is similar in large measure to this bill. I am glad you have set the record straight as far as both parties are concerned.

Mr. GURASH. I quoted from a letter received from him acknowledging receipt of our report.

Mr. CAREY. Thank you, Mrs. Chairman.

Mrs. GRIFFITHS. Do you have anything further?

Mr. GREEN. Yes.

I had a conversation several years ago when former Mayor Dillworth came down as the head of the Philadelphia Public School Board at that time, a position he assumed after he was mayor. At that time, I asked him: How can you justify the difference in the cost of educating a public schoolchild in the city of Philadelphia and a parochial schoolchild in the city of Philadelphia?

I can understand some of the costs. I think the fact that there are people with vocations teaching in the parochial schools for nothing certainly is one factor. I think salaries were traditionally lower. That was another factor.

I am talking to you as Congressman Carey was a moment ago, as a businessman, who has to take a look at the balance sheet, and as someone who has taken a look at Philadelphia education.

My question is this: Are we wasting money in the public school system that should not be wasted? Are we spending too much? Are we not doing the kind of job in the public schools for the amount of money we are spending by comparison with parochial schools?

Mr. GURASH. Congressman Green, I am really not in a position to make a critical statement of that kind about the Philadelphia schools, but let me point out one thing. Both Mr. Dillworth, the immediate past head of the Board of Education of Philadelphia, and Mr. Ross, the present head of the Philadelphia Board of Education, are members of our committee and have each been enthusiastically involved in the work of our committee, and endorse the entire report without qualification, and the report contains very detailed information concerning the difference in the cost of teaching a public school student and a parochial school student.

I might say parenthetically that the other day, publicly, in a press conference with me, Mr. Ross again emphasized his great concern about the continuing deterioration of the parochial school system in terms of the impact on the Philadelphia school system. He used a figure which I am unable to verify because we have not had a chance to talk about it since, that this year up to 10,000 pupils would transfer from the parochial school system to the public school system.

We have no way of knowing that that is a fact, so I don't want to state this officially. But he expressed great concern about the cost impact on the public school system of this shift.

Mr. GREEN. My question prompts me to make this comment.

I have the highest respect, as I think you know, for former Mayor Dillworth. I meant nothing by my question that negates that respect.

I wonder, perhaps, and your committee has not been charged with this responsibility, and certainly I cannot add to the charge of the committee. I think perhaps the committee could, for the city of Philadelphia, perform an additional useful function if they took a look at this disparity.

I am going to have to take a look at your full report and perhaps the information I seek is detailed completely in there, perhaps not.

If it is not, perhaps that is another area where a contribution could be made so that we can get down to the nitty-gritty of what it is that creates such a tremendous disparity.

The irony of this whole situation is, as I understand it, in the most recent tests, and we are not talking about children that come in one instance from terribly advantaged families and children in another instance that come from terribly disadvantaged families. Many of these children in both systems come from relatively disadvantaged families. They are finding in national testing that the kids from parochial schools, despite the reduced costs, are performing better on these tests than the children from the public schools.

I think if anybody is interested in seeing that the Government dollar is spent the way it should be, instead of wasted the way it is, this is something we should look into.

Thank you very much for coming. I really appreciate your appearance, and I think you have made a great contribution.

Mrs. **Griffiths**. We have to answer a rollcall.

Thank you very much.

We will be right back with the next witness.

(Brief recess.)

Mr. **Vanik** (presiding). The committee will come to order and resume its hearings.

The next witness is Mr. Dennis Rapps, executive director of the National Jewish Commission on Law and Public Affairs.

Mr. Rapps.

STATEMENT OF DENNIS RAPPS, EXECUTIVE DIRECTOR, NATIONAL JEWISH COMMISSION ON LAW AND PUBLIC AFFAIRS

Mr. **Rapps**. Mr. Chairman and members of the committee:

My name is Dennis Rapps, and I am the executive director of the National Jewish Commission on Law and Public Affairs, generally known as COLPA. COLPA is a voluntary association of attorneys and social scientists organized to represent the orthodox Jewish community on matters of public concern.

An important part of our work has been and continues to be the representation of the view of that orthodox Jewish community on the issue of the constitutionality of various programs of public aid to parochial schools. We have either filed amicus curiae briefs or represented particular Hebrew day schools in all the major litigation involving this issue.

I come here today speaking in favor of tax credits as embodied in title II of H.R. 16141. I will limit my remarks to a brief discussion of the need for tax relief, the essential fairness of such a program of tax credits, and its constitutionality in general and as applied to tuition paid by parochial school parents.

At the outset, I would like at least to attempt to put to rest one canard by saying in the strongest terms that the tax credit concept is simply not a subterfuge to get around the strictures of the Supreme Court. On the contrary, the Supreme Court found constitutional problems recently with particular specific programs of direct aid to parochial schools.

It certainly did not mandate antagonism between government and religion, and even a superficial analysis indicates that the excessive entanglements problem raised by the Court in those cases in the other instances are not present in the tax credit concept.

It is therefore, I believe, altogether improper to allege, as some have done, that those who seek legislation which will result in government meeting its responsibilities to education are somehow engaged in an operation to undermine the Constitution.

I submit that some program must be devised to preserve freedom of choice in education by saving the private or nonpublic school from extinction by spiraling costs and rising tuitions.

The failure to provide meaningful opportunities for lower and middle income parents to educate their children in a parochial school of their choice is in effect an abridgement not only of their parental right to choose an educational program which they feel would imbue their children with those values and character traits which would lead them to be productive and law-abiding citizens but also an impediment to their free exercise of religion by limiting religious education to those with large purses.

We fully realize that any aid to nonpublic education must conform to the principles of constitutionality recently enunciated by the Supreme Court in *Lemon* v. *Kurtzman*, 403 U.S. 602, and in *Tilton* v. *Richardson*, 403 U.S. 672 (1971), and the almost insuperable hurdle presented by these decisions to devising a viable program of aiding such schools.

Mr. VANIK. Mr. Rapps, if it is any help to you, the committee will take your statement as submitted as though read. Then you can just proceed any way you desire. I notice you are skipping over some sections. Without objection, the entire statement will be included in the record as submitted.

You can just go ahead and summarize.

(The statement referred to follows:)

STATEMENT OF DENNIS RAPPS, EXECUTIVE DIRECTOR, NATIONAL JEWISH COMMISSION ON LAW AND PUBLIC AFFAIRS

Honorable Chairman and honorable members of the Ways and Means Committee: The National Jewish Commission on Law and Public Affairs (COLPA) is a voluntary association of attorneys and social scientists organized to represent the Orthodox Jewish Community on matters of public concern. An important part of our work has been the representation of the view of that Community on the issue of the constitutionality of various programs of public aid to parochial schools. We have either filed amicus curiae briefs or represented particular Hebrew Day Schools in all the major litigation involving this issue.

We submit the within comments for consideration by the honorable members of the committee.

The time is long past due for Federal assistance to elementary and secondary education, both public and non public. The public educational systems of our nation has long been financed by local property taxation. This has resulted in wide differentials between the states and within each state on the amount spent to educate each child, and also has imposed a considerable tax burden on many homeowners who are least able to afford such taxes. Thus, in certain communities with large school age populations, homeowners have been heavily taxed and yet adequate funds to provide a first-rate educational system for their children have not been raised. Other communities, however, with smaller school age populations have been able to escape with a much smaller school tax and yet sufficient revenue to afford quality education for their children is raised. This inequality and regressive tax system has been challenged in several state and federal courts and the matter is now pending in the United States Supreme Court.

Currently the only general federal assistance to public education is indirect—allowing property taxes, including school taxes, as a deduction on the federal income tax return. Allowance of the deduction means that the federal government shares in the payment of school taxes to an extent, dependent on each taxpayer's particular bracket. This also has its inequities for millions of urban dwellers who rent apartments rather than own their own homes and pay real property taxes indirectly through rents which are not tax deductible.

Perhaps, it would be more equitable to devise some federal program which would replace the school tax in whole or in part by a per capita grant of several hundred dollars to each school district. Although the cost of such program would no doubt run into billions of dollars, much of this expenditure could be recouped by abolition of local property tax as a deduction. Since the property tax load will be considerably lightened by assumption of school costs by the Federal government, the net cost to the average homeowner would remain substantially the same and he would receive no preferred treatment over the person who rents an apartment. Such federal financing would also resolve to a great extent the disparity in school financing between the states and within the states.

At the same time, some program must be devised to preserve freedom of choice in education by saving the private or nonpublic school from extinction by spiraling costs and rising tuitions. The failure to provide meaningful opportunities for lower and middle income parents to educate their children in a parochial school of their choice is in effect an abridgement not only of their parental right to choose an educational program which they feel would imbue their children with those values and character traits which would lead them to be productive and law-abiding citizens but also an impediment to their free exercise of religion by limiting religious education to those with large purses. (Cf. *Follet* v. *McCormick*, 321 U.S. 573, 576 (1944; *Sherbert* v. *Verner*, 374 U.S. 398, 403–404 (1963)).

The Regents of the State of New York, a body with a long history of experience and expertise in education, has stated:

"The Regents are committed to respect and protect diversity in the educational institutions of the State. Pluralism has stood our citizens and young people in good stead. The private institutions of the State, of both sectarian and non-sectarian sponsorship, have provided an option for education meeting at least minimum standards of quality and affording opportunities for innovative design. Moreover, they give viability to the right of parents to choose for their children other than those established by public authority.

"This right of parents and the rights of all children to equal educational opportunity are both fundamental constitutional rights. They are not in conflict. Both must be protected in order to maintain their viability as rights, lest the protection of one right shall interfere with or diminish the other. As was said in *Shapiro* v. *Thompson*, 394 U.S. 618, 631 (1969) laws should not needlessly "chill the assertion of constitutional rights by penalizing those who choose to exercise them . . ."

(Statement of the Board of Regents, May 28, 1971, Journal of Meetings of Board of Regents of The State of New York.)

We fully realize that any aid to nonpublic education must conform to the principles of constitutionality recently enunciated by the Supreme Court in *Lemon* v. *Kurtzman*, 403 U.S. 602, and in *Tilton* v. *Richardson*, 403 U.S. 672 (1971) and the almost insuperable hurdle presented by these decisions to devising a viable program of aiding such schools. Nevertheless, we do submit that there is one method whereby government can effectively and meaningfully aid nonpublic education without becoming "excessively entangled" in the affairs of religiously oriented nonpublic schools. That method would be to encourage parents to give greater support to such schools by paying higher tuitions and by granting tax deductions and/or credits to such parents.

Contributions to churches and parochial schools have long qualified as charitable deductions from income taxes although tuition has not. Such deductibility has been noted with approval by the Supreme Court in *Walz* v. *Tax Commission*, 397 U.S. 664 (1970). Congress has also permitted taxpayers to deduct membership dues to churches.

To be sure, tax deductions necessarily favors the richer families who are in higher tax brackets since the amount deductible decreases the amount of tax payable on the highest level of income.

On the other hand, a tax credit whereby a tax payer is credited with the full amount of tuition paid to the nonpublic school, up to the maximum established by Congress, would have much greater significance in providing aid to lower and middle income parents in relieving them of tuition costs beyond their means.

In effect, a uniform credit against tax due is the reverse of a tax deductibility system which benefits mainly the higher income families who are subject to progressively higher tax rates whereas the credit aids primarily the lower income families by exemption a larger portion of their income from taxes.

Both deductions and credits are exemptions of certain income from taxation by grace of the legislature. For example, Congress has allowed persons paying income taxes to foreign governments an option between a credit and a deduction (CF. I.R.C. secs. 164, 901). The purpose of such deductions or credit is to avoid the hardship of double taxation on the same income. The same option should be provided to parents who send their children to nonpublic schools and must foot the bill for both private education via tuition and public education via school taxes and other state taxes which pay for such education. The "double taxation" involved is no less real than payment of foreign income taxes.

SUMMARY OF LEGAL ARGUMENTS

We believe that no constitutional problems are present under such deduction or credit system.

(1) There is no "excissive entanglement" of government and religion. The "excessive entanglement" of government with religion held in *Lemon* to bar direct transfer of public funds to parochial schools or parochial school teachers is not present in the tax credit program. As stated by Justice Brennan in his concurring opinion in *Walz* v. *Tax Commission*, 397 U.S. 664 at 690–691, exemptions and general subsidies are qualitatively different. The methods used are fundamentally different. A subsidy involves the direct transfer of taxpayers' funds to the subsidized enterprise. Since the state must have a public purpose in providing such a subsidy and may not use such funds for a private purpose, it cannot escape some type of supervision of the subsidized enterprise. The necessity of supervision creates the entanglement dilemma. Tax exemption is only a passive state act by relieving from the burden of taxation such private persons or enterprises which serve some useful purpose or relieve government of some burden it would otherwise have to assume. Supervision of the exempted enterprise or person is not required except for the prevention of fraud. The tax authorities merely have to ascertain the fact that the tuition was paid by the parents. And as pointed out by Justice Harlan at p. 699, subsidies, unlike exemptions, must be passed on periodically and thus invite more political controversy than expenditures.

Clearly, no greater entanglement in the affairs of parochial schools is involved in the administration of such program than in verification of contributions made to churches and claimed as deductions on one's tax return. The inquiry of the state tax auditor is limited to the good faith of the taxpayer in claiming the credit. Nothing is required of the state educational bureaucracy under such program, which is not already obligated to perform under the compulsory education law. No annual appropriation is necessary, since no public funds are being expended. The school need not alter its method of teaching secular subjects or time alloted to such subjects, so long as it complies with state educational requirements, which it must do, regardless of whether any tax benefit is granted.

(2) "Tax Credits" is a constitutional exercise of the taxing power.

(a) It is well settled that the State has very wide latitude in exercising its taxing power and in making exemptions from such taxes and that unless the classification is so palpably arbitrary and irrational that it serves no legitimate state interest, the courts will not interfere in such matters. Any ground of difference having a fair and substantial relation to the object of the legislation is all that is required to sustain such classification, since all persons similarly situated are treated alike. The proper question is therefore whether the offering of a tax incentive to parents to expend their own funds on tuition of their children and thereby save the state substantial expenditure is a rational basis for granting such parents a tax credit for a small fraction of the savings inuring to the state.

While it is undoubtedly true that a tax is not an assessment for direct or indirect benefits but is, rather, a means of distributing the burden of the cost of governmental services, and that persons who have no children and corporations must pay school taxes to the same extent as parents of school children, it is not unreasonable to provide some tax relief to those persons who voluntarily shoulder the burden of education for their children and thereby relieve the state of such costs.

By way of analogy, non-residents are often taxed at lower rates of income tax because the benefits they receive from the state or city in which they work are significantly smaller than those given to residents. In other words, it is not inequitable to correlate the amount of income taxes paid to the benefits actually received from the state.

Therefore, if taxes and benefits are somehow correlated with each other, although concededly such relationship may be indirect and disproportional, it cannot be said that the State acts irrationally and in a palpably arbitrary manner when it does relate the tax payable to the benefits actually received. In may states, agricultural lands pay a lower rate of school tax than other lands on the theory that they derive less benefits from enhanced value or otherwise from the existence of schools. It should be allowed to pass along a portion of the substantial savings it has by virtue of the willingness of some parents to send their children to non-public schools to such parents.

It would seem that the lack of uniformity in the amount of the credit granted should be of no consequence, since the state may always take ability to pay into consideration in formulating a progressive tax system. A legislative body may well deem the paying of tuition to a non-public school more burdensome to persons in lower tax brackets than it is to those in higher income brackets.

(b) The fact that public funds may not be used directly to support parochial education does not preclude the granting of tax credits. The investment tax credit of 7% of the amount expended on new machinery up to a maximum of $50,000. Its purpose is to stimulate the economy by inducing the purchase of American-made machinery in preference to those made eleswhere. The use of taxpayers' funds to aid private business appears to be unconstitutional, yet a credit for such purpose is allowable.

Mr. RAPPS. Basically, sitting through the hearing this morning, I found that many of the points raised in my statement were in fact discussed at length. For fear of repetition, I wanted to skip over many of the points.

However, I departed from the prepared text to address myself as I did at the outset. It seems to me that there is a pervasive feeling that, having lost in the courts on the direct aid issue, people are scurrying around trying to make deals to get any kind of aid that they can. I think that this is the wrong approach, in the sense that I really believe there is a responsibility on the part of Government to enable religious practice, and I believe that parents who send their children to religious schools that teach religion as only part of their educational program and who pay tuition to these schools and also pay the general tax requirements—fulfilling the general tax requirements out of which educational funds come—deserve some rebate.

I believe that this is far from being a raid on the Treasury. I think this is equitable, and I think this is something that is mandated by the sense of responsibility that Congress, I believe, will follow.

Again, I submit on the statement in which we have outlined some various constitutional arguments which have appeared before in our briefs, and I suspect if Congress gets around to enact this legislation they might possibly be found in the future in briefs in court on this very issue.

Mr. VANIK. Mr. Brotzman.

Mr. BROTZMAN. Thank you, Mr. Chairman.

I just wanted to be assured that you have set forth your legal position here, which I will be glad to read. I realize you kind of skipped over it.

I don't think we need to take a lot of your time now.

I do notice that you do have in your prepared statement the citations of various cases that led to the conclusion that you enunciated. This will be most helpful to the committee.

I want to thank you for your appearance here today.

Mr. VANIK. Mr. Conable.

Mr. **Conable.** I have nothing except to thank you for your patience, also. I realize that we have had a long day. Sometimes it seems interminable listening to a lot of other people first. We have this problem frequently.

Mr. **Vanik.** Mr. Rapps, you earlier heard the question that I addressed to a previous witness concerning the administration's recommendation for a phaseout for persons above the middle-income bracket, above $18,000 a year. What is your attitude on that recommendation?

Mr. **Rapps.** I don't know whether your question is addressed to the practicalities, or whether that is necessary to get something in the hopper.

Mr. **Vanik.** My question is: Would that kind of language improve the legislation, or would it detract from it? What is your reading of that sort of approach?

The purpose of this language is to prevent the extension of the credit to the higher income brackets above the $18,000 level, and thereby reducing the cost of the program.

Mr. **Rapps.** You see, I approach this question on the basis of equity. It is true that a person with a higher income might be in a better position to stand the cost of the added tuition.

However, on the basis of equity, I don't see why, regardless of how much a person earns, he should be required to undergo double taxation. It is as simple as that.

I realize that there is a problem of the amount of money that this would take out of the Treasury in the sense that it would reduce the tax revenue. However, I submit that be that as it may, the issue is simply one of fairness. I believe that parents should not be required to pay double taxation.

If they are required to pay general taxes out of which education funds come, I think that when they send their children to a school that relieves the State of the burden of educating their child, it is a public purpose, I think that regardless of their income they should get this sort of tax credit.

I want to emphasize that I am not here to urge the committee to pass favorably on a particular program. This is one particular aspect of a particular bill.

Mr. **Vanik.** The administration's recommendation had another purpose. It would provide also that those people who paid no taxes, and therefore would get no credit to take on their taxes for the cost of sending their children to private schools would get a Treasury refund which would be equivalent to the amount to which they would be entitled under this bill.

Now, that feature would cost more, and I suppose it was the purpose of the $18,000 cutoff, to extend this program to the poor and to the nontaxpayer who suffers the expense and yet has no tax credit from which he can claim a benefit.

With that added feature, does that change your opinion on your reaction?

Mr. **Rapps.** It does not.

Mr. **Vanik.** It does not?

Mr. **Rapps.** Well, let me clarify.

I would rather not discuss a particular program. I came here to emphasize our belief that the principle is sound. I think the arguments, if I may say so, are quite persuasive in a legal sense and in a practical sense.

It is true that things are going to have to be ironed out as to who gets what, but I really believe that the focus at this point, at least for my purpose, is on the acceptance of this approach, and to separate it from any feeling that this is somehow a devious means to get around the Supreme Court.

I might add that this is not unique with education. Many investment tax credits have been granted to business, even though direct benefits to the business are apparently unconstitutional. Yet there is no problem with the investment tax credit.

I think it is not a novel concept. I think it is well accepted in American constitutional law, and I feel it should be adopted.

Mr. VANIK. Mr. Carey, do you have any questions of Mr. Rapps?

Mr. CAREY. Thank you, Mr. Chairman.

I am delighted to welcome to the committee my colleague in law, who, I take it, is admitted to the bar of the State of New York.

Mr. RAPPS. Soon to be admitted.

Mr. CAREY. Well, it will be a great addition to that panel. I note that the Commission does not indicate on here who are its members. The reason I cite this is because I am impressed by your summary of legal arguments.

I would hope when we peruse the committee record, we could know the source and the authors of the arguments, or those who propound the arguments, because to me the cogent and very fundamental way in which you approach the tax credit in your summary is helpful. I would like to know the source of them, other than yourself.

Mr. RAPPS. May I respond to that?

We had gotten notice of the meeting on late Friday afternoon. Obviously, we could not work on it Friday night or on Saturday. We worked on Sunday and on Monday preparing the arguments. We did some quick research.

The statements that are made we believe are an honest evaluation of various cases we investigated. I omitted the citations just for brevity's sake. I am fully prepared to expand on them in a later document, and I intend to do so.

Mr. CAREY. I would urge you to do that, and also indicate, as you probably will, the attorneys who are involved in the preparation of the brief.

Mr. RAPPS. Certainly.

I might add that Rabbi Sherer who was here this morning is in fact a member of our board of directors and one of the guiding lights of our organization.

Mr. CAREY. The reason I say that is because I have always known members of the bar, particularly those who are members of the bar practicing in Brooklyn, N.Y., are never shy or inclined to shrink from the public eye when their work is being praised and commended.

Mr. RAPPS. I suspect I will hear about this from members of the organization.

I must plead that we did not have the time to go to an elaborate presentation.

Mr. CONABLE. Will the gentleman yield?

Mr. CAREY. I will yield to my colleague.

Mr. CONABLE. I wonder if you would also indicate possibly whether you have any more trouble with this than the constitutional implications here, if it is refundable or nonrefundable. This is one thing that troubles some of us here. We would like to know what the legal distinctions are in this particular sort of problem.

The administration has indicated they are willing to go with the refundable. I am not sure about that. So the legal position on that would be of interest, since you stress the legality and the constitutionality.

Mr. RAPPS. I did some of the research on this point in general, and I did not come across any cases that discussed that distinction you are making, but I would suspect that it would have to be, as usually is the case, analogized to general principles of law.

I just wanted to address myself again to Congressman Carey, if I may.

You asked about some of the people. The organization has approximately 250 members. They are attorneys throughout the country, and not merely in Brooklyn or in New York.

As a matter of fact, we were just involved in an effort to secure an addition to the amendment to the Civil Rights Act of 1964, the EEO Act of 1972, and it was successfully accomplished with the aid of our people here in Washington and nationwide. That provision extends protection for religious minorities in employment.

Mr. CAREY. I think it is highly commendable that a panel of lawyers would give of their time and energy and expertise to work on this very knotty and complicated question. I think it would be most helpful if you give us the final result of your labors.

I welcome the note introduced by my colleague from New York, Mr. Conable, that it would be helpful to the committee if you would give us your precise analysis of the legal implications of what I call the tax remission for those who do not have tax liability sufficient to earn the full credit. That would be helpful to us, of course.

Let me pursue with you just one other point.

It has been said with considerable merit that the credit should not be available in the higher income brackets, that it does not serve the public purpose or our notion of economy to be generous with those who are well endowed.

What would you think of a combination in which the credit or a percentage of credit, in accordance with the suggestion made by the ranking member on the minority side, Mr. Byrnes, was available in the lower income brackets, and then there would be an option to take, instead of a credit, a deduction so that a part of the tuition, but not the full tuition, would be available by way of a deduction with a maximum level on the deduction?

Said maximum level would have no impact on the current reservation of charitable contributions, so that that overall figure would not be increased, but there would be a deductible feature for a part of tuition payments. In that way the higher income taxpayer would have a deduction instead of a credit available. As an analogy, we have that option available in the campaign funding bill, in which you provide the $25 credit for the couple filing a joint return, or a deduction not to exceed $50 for a contributor of a higher amount, e.g., a $100,000 contribution. So that option is available in campaign funding.

Would the combination of deduction and credit present any constitutional problem, as far as you are concerned?

Mr. **Rapps.** I don't believe there would be any problem of constitutionality.

Again, as I memtioned, since I will not be admitted until October, I would like to pass without consulting with other people as to constitutionality.

Mr. **Carey.** Would you include that in your analysis that you finally submit to us?

Mr. **Rapps.** I do want to respond to that that I think it has to be approached as a subject on the basis of fairness. I believe that the higher income person should have the option as well as the lower income person to vindicate the principle that a person should not be subject to double taxation.

Without indicating support for one bill or one measure over another, I would maintain that is the proper approach, that any language or any provision should embody that principle of basic equity. He is really exercising a right, and he should not be in effect discriminated against because he exercises his constitutional right.

Mr. **Carey.** Thank you very much for a very scholarly presentation.

You have already taken the bar, have you?

Mr. **Rapps.** Yes, I have.

Mr. **Carey.** I have no doubt that your admission will be accomplished.

Thank you.

Thank you, Mr. Chairman.

(The following statement was supplied for the record:)

Supplemental Statement and Memorandum of Law of the National Jewish Commission on Law and Public Affairs

To the Honorable Members of the House Ways and Means Committee: The statement submitted by our organization on August 15, 1972, did not contain the full arguments and citations in support of our contention that granting of tax credits does not pose any serious constitutional problems, in light of the 1971 rulings of the Supreme Court in *Lemon* v. *Kurtzman*, 403 U.S. 602 and *Tilton* v. *Richardson*, 403 U.S. 672. Our statement explained why the "excessive entanglement" dilemma which seems to bar any program of direct governmental assistance to parochial schools does not exist with tax credits (pp 28). Our present statement will go into greater detail as to why it is fair and equitable to invoke the power to grant tax relief to those persons who voluntarily assume the heavy burden of tuition for their children at non-public schools and thereby relieve the government of the cost of education.

It is our position that any program involving "tuition reimbursement" in part or in whole presents a far more serious constitutional problem, since an expenditure of government funds obtained through taxation must be for a valid public purpose. And while we have no doubt that financing the secular portion of parochial school education is a valid public purpose (*Board of Education* v. *Allen*, 392 U.S. 236,248 (1968)), ascertaining the proper use of public funds necessarily calls for auditing and inspection of such schools by public agencies and thereby creates the dilemma of "excessive entanglement" posed by the Lemon case.

We therefore oppose granting any tax refund or credit to persons paying no income taxes to the Federal Government. If no taxes are due, such tax refund will obviously be deemed a reimbursement of tuition and may well doom the entire tax credit program.

A tax credit is a "horse of another color." It relieves certain taxpayers of the need to pay income taxes, similar to deductions allowed for charitable contributions, interest payments, state and local taxes and miscellaneous other reasons. For example, the Internal Revenue Code now allows tax credits for retirement income (§37), investment in new machinery (§38), gasoline tax (§39), foreign income taxes (§901), work incentive programs (§40) and political contributions (§41).

The investment tax credit is a credit of 7% of the amount expended on new machinery up to a maximum of $50,000. Its purpose is to stimulate the economy by inducing the purchase of American-made machinery in preference to those made elsewhere. The use of taxpayers' funds to aid private business would be unconstitutional (*Loan Association* v. *Topeka*, 20 Wall. 655 (1870); *Parkersburg* v. *Brown*, 106 U.S. 487 (1882); *Weismar* v. *Village of Douglas*, 64 N.Y. 91 (1876), yet a credit for such purpose is allowable.

Similarly, the foreign tax credit is designed to avoid double taxation, although it is inconceivable that taxpayers' funds would be used to pay a taxpayers' obligations to a foreign government. Similarly, it is doubtful whether taxpayers' funds would be used to fund political campaigns at all levels.

The concept of "double taxation" is not irrelevant to consideration of the instant "tax credit."

The proper issue is whether government may grant a tax exemption to persons who willingly forgo a benefit offered them by it—free education of their children for 12 years—thereby relieving the government of considerable expenditure running into thousands of dollars per capita over a 12 year period.

It is well settled that government has very wide latitude in exercising its taxing power and in making exemptions from such taxes and that unless the classification is so palpably arbitrary and irrational that it serves no legitimate governmental interest, the courts will not interfere in such matters. Any ground of difference having a fair and substantial relation to the object of the legislation is all that is required to sustain such legislative classification, since all persons similarly situated are treated alike. *Bell's Gap R.R. Co.* v. *Pennsylvania*, 134 U.S. 232, 237 (1890); *Rogers* v. *Hennepin County*, 240 U.S. 184, 191 (1916); *Louisville Gas Co.* v. *Coleman*, 277 U.S. 32, 37, 40 (1928); *Allied Stores* v. *Bowers*, 358 U.S. 522, 526–528 (1959). In the latter case, the court found that exempting non-residents' merchandise in storage was a valid exercise of tax power by the state. And as so well stated by the Court in *Carmichael* v. *Southern Coal Co.*, 301 U.S. 495, 509, 510 (1931):

"It is inherent in the exercise of the power to tax that a state be free to select the subjects of taxation and to grant exemptions. Neither due process nor equal protection imposes upon a state any rigid rule of equality of taxation. (Citations omitted). This Court has repeatedly held that inequalities which result from a singling out of one particular class for taxation or exemption infringe no constitutional limitation. (Citations omitted).

"Like considerations govern exemptions from the operation of a tax imposed on the members of a class. A legislature is not bound to tax every member of a class or none. *It may make distinctions of degree having a rational basis*, and when subjected to judicial scrutiny they must be presumed to *rest on that basis if there is any conceivable state of facts which would support it.* (Citations omitted.)

"The restriction upon the judicial function, in passing on the constitutionality of statutes, is not artificial or irrational. A state legislature, in the enactment of laws, has the widest possible latitude within the limits of the Constitution. . . ." (Emphasis added.)

The proper question is therefore whether the offering of a tax incentive to parents to expend their own funds on tuition of their children and thereby save government substantial expenditure is a rational basis for granting such parents a tax credit for a small fraction of the savings inuring to the government. In order to answer this question, perhaps an examination of the jurisprudential basis of taxation should be undertaken.

In *Wisconsin* v. *J. C. Penny Co.*, 311 U.S. 435 (1940), Justice Frankfurter, speaking for the Court, explained that taxes are exactions by the state to pay for the cost of governmental services. He said at p. 444:

"A state is free to pursue its own fiscal policies, unembarrassed by the Constitution, if by the practical operation of a tax the state has exerted its power in relation to opportunities which it has given, to protection which it has afforded, to benefits which it has conferred by the fact of being an orderly civilized society."

While it is undoubtedly true that a tax is not an assessment for direct or indirect benefits but is, rather, a means of distributing the burden of the cost of governmental services, and that persons who have no children and corporations must pay school taxes to the same extent as parents of school children (*Carmichael* v. *Southern Coal Co.*, 301 U.S. 495, 522–23 (1937); *Union Transit Co.* v. *Kentucky*, 199 U.S. 194, 203 (1905)), it is not unreasonable to provide some tax relief to those persons who voluntarily shoulder the burden of education for their children and thereby relieve the government of such costs.

By way of analogy, non-residents are often taxed at lower rates of income tax because the benefits they receive from the state or city in which they work are significantly smaller than those given to residents. In other words, it is not equitable to correlate the amount of income taxes paid to the benefits actually received from the state. For as suggested by Cooley:

"If it were practicable and possible to do so, all taxes should be apportioned among people according to the benefit each receives." 1 Cooley, Taxation, 4th ed., sec. 89 at p. 213.

Congress has given recognition to this principle of taxation by exempting the Amish from employment taxes and granting them a refund of all taxes paid from 1951 to 1965 since the Amish are conscientiously opposed to the acceptance of any benefits of Social Security or other private or public insurance. (I.R.C. Sec. 1402, as amended by P.L. 89-97; Social Security Act of 1965, sec. 319.) Since members of this group waive their rights to benefits, it was felt that it would be only just to exempt them from employment taxes, used to finance such benefits. Although employment tax is a tax and not a voluntary contribution toward a pension program, and individuals cannot choose to opt-out of such taxes, Congress did see fit to provide tax relief to persons whose sincere beliefs bar their acceptance of benefits for which the taxes are levied.

In *Morton Salt Co.* v. *City of South Hutchinson*, 159 F. 2d 897 (10th Cir. 1947), the Court enjoined the sale of bonds by a municipality for construction of a waterworks system which would be financed by a pro-rate assessment on all property owners in the City, including plaintiff which owned about 46% of total assessed value of all property and which would not receive any benefit from such waterworks. It cited the *Wisconsin* v. *J. C. Penney Co.*, case, *supra*, for the proposition that the test of due process and equal protection is whether the taxing power exerted by the state bears fiscal relation to the protection, opportunity and benefits given by the state. If a tax imposed clearly results in a flagrant and palpable inequality between the burden imposed and benefit received, it is tantamount to an arbitrary taking of property without compensation. It cited *Kansas City Southern Railroad* v. *Road Improvement District*, 256 U.S. 658 (1921) and *Thomas* v. *Kansas City Southern Ry. Co.*, 261 U.S. 481 (1923) where local assessments were invalidated because they were grossly disproportionate to the benefits conferred, and reasoned that the nomenclature of the tax—whether it is labelled a tax or local assessment—should not determine the issue of due process:

"Whether the exaction is in the form of a special assessment for a special improvement, or a general tax for the general welfare, the constitutional test is always whether anything is given or offered for that which is taken. Indeed, the underlying purpose for the creation of special taxing districts is to attain a constitutional balance in relationship to benefits conferred for burdens imposed. Cooley, Taxation, Vol. 1, Sec. 320" (Id. at p. 902).

If taxes and benefits are somehow correlated with each other, although concededly such relationship may be indirect and disproportional, it cannot be said that a state acts irrationally and in a palpably arbitrary manner when it does relate the tax payable to the benefits actually received. In many states, agricultural lands pay a lower rate of school tax than other lands on the theory that they derive less benefits from enhanced value or otherwise from the existence of schools. *Dickinson* v. *Porter*, 240 Iowa 393, 35 N.W. 2d 66, 73 (1949), app. dis. 338 U.S. 843 (1949). See also Annot. 111 ALR 1486 (1937). Many states and local governments expend over 20% of their entire budgets on elementary and secondary education. In turn, the Federal Government will soon pick up a sizeable portion of these budgets through revenue sharing. Government should, in all fairness, pass along some of the substantial savings it has by virtue of the willingness of some parents to send their children to non-public schools to such parents. For, as is so well stated by the Appellate Division, Second Department in *St. Barbara's R.C. Church* v. *City of New York*, 243 A.D. 371, 274, 277 N.Y. Supp. 538, 541:

"No doubt this parochial school is enabled to function to the advantage of the State and City, in large measure through the services of the members of this society. The taxes which the Legislature by the statute quoted requires the City to forego are infinitesimal in amount compared with the cost ot the community to educate the pupils of this parochial school should it become necessary to do so by different public facilities. The purely monetary benefit which accrues to the city through this exemption by the Legislature far exceeds in amount the taxes cancelled."

See also Concurring Opinion of Brennan, J. in *Walz* v. *Tax Commission*, 397 U.S. 664, 687, 688 (1970).

The same rationale applies to parents whose tuition largely finances such parochial schools.

As recently stated by Judge Oakes of the Court of Appeals for the Second Circuit in his concurring opinion striking down a Vermont statute granting certain and to non-public schools:

"I do so because I feel compelled by the reasoning of *Lemon* v. *Kurtzman*, 403 U.S. 602, 91 S. Ct. 2105, 29 L. Ed. 2d. 745 (1971), which as an inferior court we are required to follow. I do so with regret, however, for it concerns me lest the inevitable result of the prohibition against 'excessive entanglement,' not coupled with the test of 'impermissible involvement,' may signify the demise of the parochial school in America.

"To me, this would be a most unfortunate result. Ours has been a pluralistic society, fostering creativity out of multiple peoples, religious and philosophic systems of thought, and ethnic ties. f. R. Niebuh, A Note on Pluralism in Religion in America 4[illegible]958).

"In the advancement of this pluralistic society, the parochial school system has played a not insignificant part. *Lemon*, I fear, will tend toward a homogenization of American education. There will, therefore be all the more reason to search for ways within the American system of public education that will preserve, indeed promote, the diversity of individual belief—religious, political and social—that, along with our Bill of Rights distinguishes us so plainly from certain uniform, unified and unigoverned societies elsewhere in the world." (*Americans United* v. *Oakey*, 339 F. Supp. 545, 553.)

We believe that it is most appropriate for Congress to take the lead in shaping the constitutional law in this area, and for the courts to exercise judicial self-restraint. As so well put by Professor Paul Kauper, an eminent constitutional lawyer, who concluded his lecture on "Government and Religion, The Search for Absolutes" (published in *Michigan Law Quadrangle Notes*, Vol. 15), as follows:

"In short, the courts may in an appropriate gesture of modesty recognize that they do not have all the wisdom in these matters, that there is latitude for some play in the joints, and that in the area of church-state relations as in all other areas of public concern where policy considerations loom large, it is not inappropriate to leave the determination of some issues to the operation of the democratic process."

The time may have arrived for a soul-searching examination into whether the "establishment" clause with all of the judicial gloss placed on it need be further expanded to stifle the will of the democratic organs to offer minimal assistance to parents whose religious beliefs and conscience compel them to choose the parochial school over the public school. (See Concurring Opinion of Harlan, J. in *Walz*, *supra* at p. 699). This right is, of course, constitutionally guaranteed. *Pierce* v. *Society of Sisters*, 268 U.S. 510 (1925). However, a constitutional guarantee may sometimes be meaningless where inseparable monetary barriers prevent its exercise. *Boddie* v. *Connecticut*, 401 U.S. 371 (1971). We respectfully submit that Congress should do all in its power to enable parents to effectively exercise their constitutional prerogatives.

It seems to us that enactment of the tax credit bill would be a major policy determination by the Congress that the nonpublic schools are worth preservation and that parents who desire such education for their children are not second class citizens who must fully burden the cost of tuition and pay their school taxes. Government should at least lighten the burden by sharing such cost with parents. To use the Biblical phrase: "If thou see the ass of him that hateth thee lying under his burden, and wouldest forbear to help him, thou shalt surely help with him." (Exodus 23 v. 5).

We respectfully submit that we too deserve some help with our burden and pray that Congress will not forbear such minimal assistance.

Mr. VANIK. There being no further questions, thank you, Mr. Rapps. We appreciate your testimony and your patience. The committee now stands adjourned until 10 o'clock tomorrow morning to continue public hearings.

(Whereupon, at 3:50 p.m., the committee adjourned, to reconvene at 10 a.m., Wednesday, August 16, 1972.)

TAX CREDITS FOR NONPUBLIC EDUCATION

WEDNESDAY, AUGUST 16, 1972

House of Representatives,
Committee on Ways and Means,
Washington, D.C.

The committee met at 10 a.m., pursuant to notice, in the committee room, Longworth House Office Building, Hon. Al Ullman presiding.

Mr. Ullman. The committee will be in order.

Our first witness is Mr. C. Stanley Lowell. Mr. Lowell, we will be very pleased to hear you. Will you please further identify yourself for the record.

STATEMENT OF C. STANLEY LOWELL, ASSOCIATE DIRECTOR, AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE

Mr. Lowell. I am the associate director, Mr. Chairman, of Americans United for Separation of Church and State, which is a nationwide organization having more than a hundred thousand constituent members. We have also 130 chapters in all the States. We were founded just 25 years ago by leading educators, churchmen, professional leaders, and lawyers who were concerned for the first amendment, particularly in the religion clauses. We have been concerned to defend the complete religious freedom of all groups under the free exercise clause and also to oppose what we consider to be acts respecting establishment of religion.

It is from that stance, the constitutional problem involved in this legislation, that I shall be testifying today.

I notice, Mr. Chairman, the speech made on Monday of this week by Chief Justice Burger of the Supreme Court in which he commented on the sheer clutter of cases coming before the Supreme Court, many of them, of course, involving constitutional issues, and he was wondering whether some procedure in advance could not be followed that conceivably would weed out some of this work that the Court has to do.

I think we have a prime example of that sort of problem in the legislation that is proposed here and on which the hearings are being held. It seems to me that we have a definite constitutional problem. I know that my organization, its legal department, would be very glad to prepare a legal memorandum on this question which might be of help and guidance to the committee if this were desired.

The constitutional problems spring from the fact that 90 percent of the schools involved in this proposal to receive benefits indirectly through parental grants for tuition costs are church-related schools.

They exist for sectarian segregation, for sectarian indoctrination, for sectarian recruitment. They exist for sectarian purposes identical with those of the sponsoring church. Therefore, acts aiding these institutions are at once suspect as acts establishing religion and are involved in the constitutional issue.

We know that the Supreme Court has recently held—as recently as June 1971—that no aid may be given directly even for secular studies to the support of church schools. Now, why is it any more constitutional to subsidize parents to provide a religious education for their children than to subsidize church schools to do the same thing?

It seems to me that we cannot avoid the kind of church-state entanglement which the Court cited in the *Lemon* and in the *Di Censo* cases last year. It is true—and I am just commenting on two or three of the points that I will have in my longer statement which is submitted for the consideration of the committee—it is true that this claims to be in the form of indirect aid to the parent rather than to the institution involved, and it is in the form of a tax credit to the parent against sums paid by him for tuition in a church school, but that is a strictly contingent grant. It is not a general grant to the parent in consideration of his tax. It is tax credit on the condition he deposit this amount or a larger amount for tuition in schools 90 percent of which are church schools.

Now, the thought here apparently is that since the cash benefit—because that is what it amounts to—pauses for a moment with the parent before it goes to the institution or is transmitted to the institution in the form of tuition, that this, in a sense, sterilizes the grant so that there is no church-state complication involved. But actually this is no different from a cash payment to the school itself since it goes in the form of a cash advantage to the parent on condition that he transmit it to the school.

I feel that if this controversy is allowed to open up through passage of legislation of this kind, we are going to have all kinds of sectarian controversies involved in politics. We will open up a whole chapter here that we certainly do not need.

My second point is that I think this will erode very seriously the tax basis of the Nation. In fact, I am rather startled that legislation of this kind would emanate from the Ways and Means Committee, because they have always been so punctilious, so very careful to preserve the tax base on which the very stability of Government stands.

Now, the sponsors call for an initial $200 grant on credit for income tax for students' tuition in a private or parochial school, and they say this would be about a $584 million deficit that would be created in our tax structure. But actually, I think, if there are five and a half million students in nonpublic schools, this would run over a billion dollars initially.

Now, this is lost revenue. That means that either the services of Government must be cut by that amount or that other taxpayers will have to make up the amount in additional taxation in violation of their equal rights.

The justification is that this is a "good cause"; it is for the religious education, the special education of children in private and church schools. Of course, that is a good and worthy cause, but one can think of many other good and worthy causes. I think, gentlemen, that if this concept of tax credits gets started in the thinking of the Nation, there are going to be many, many good causes that will come in here with political muscle and the tax base of the Nation may be steadily eroded. I don't think we want to open up such a process with legislation of this kind.

Our next point is that this legislation will be socially and educationally regressive. There is all the difference in the world between a selective school, a private school that has a selective clientele, whether that be on the basis of religious discrimination, racial discrimination, aptitude discrimination, or whatnot—there is all the difference between a school of that kind and a public school which is open to all without any discrimination of any kind.

It seems to me that the latter schools are the kind that should receive the tax aid of the Federal Government. Only those which serve the entire population should be supported by taxes from the entire population. It seems to me we are taking a long step to the discounting and downgrading of our public school system with legislation of this kind.

There is a certain kind of mentality among our people today that they would rather run away and turn their backs on a problem than stay and face it and solve it. What you are doing in legislation of this kind is to give the middle class an opportunity to get out of the public schools. The grass is always greener on the other side of the fence. They would go out. And remember that the only persons assisted in this program are those who can gain admission to a private school.

Now, there may be some forms of tokenism in regard to the various discriminations practiced, but I don't think that would substantially alter the basic picture. This is subsidizing an exodus from the common schools of the public to private, selective church schools, leaving the public schools as a giant wastebasket for the rejects, those who, because of their religion, their race, their aptitude, or their behavior problem cases, are not wanted in the private schools.

I do not think that we want to turn in that direction. We want to stay and solve the admitted problems of our public schools. We cannot do that by pulling out the better element of their constituency.

Finally, I think this legislation is economically unwise. We have the Fleischmann report to Governor Rockefeller in New York, about which we have heard in these hearings. It seems to them, as it seems to me and to many others, a very obvious conclusion that it is much cheaper to support the education of children in one common system of coordinated, consolidated schools than to support them in two systems or in many systems.

As a matter of fact, the Gary report to the Fleischmann commission said the difference would be $415 million that would be saved in operating revenues alone should this merger come about and all the parochial school students be transferred to the public schools.

We know that the main argument for this kind of legislation is that we have to do something to help the church schools. One system only—the Catholic system—is in a state of near collapse. We are told that it will have 50 percent smaller enrollment within the next decade than it has now, and we are told that no matter what forms of substantive aid may be given to these schools, the decline will be just about at the same rate. Many studies have shown that.

It is a question, then, of whether we shall attempt to shore up a failing church school system which its own members are no longer willing to support. I don't think that is a proper function of Government. Certainly from the standpoint of economy, it is much cheaper for the Government to have the education of all these children in one common school system, a consolidated system, than in two systems or in many systems where you have the additional cost of double buildings, double instruction costs, and all the rest.

Sidney Marland, the Commissioner of Education, has noted that where these closings have been taking place, children have been very easily absorbed into the public system without any problems.

Now, one reason for the decline of the parochial schools is also the reason for the decline of the public schools. There are fewer children. This vision we have, this image of continually increasing school population, is false. It is a hoax. As a matter of fact, we have a half-million fewer children each year than we had in the early sixties. Now, that has just begun to catch up with the schools. Actually, the entire school population has declined in the past 2 years. That is true only in the elementary schools at this time. But as time does on, it will reach up and affect secondary schools as well, so that by 1984, because of the decline in the number of babies coming up each year through the schools, we will be able to absorb all the children if the parochial school system closed completely—which it is not going to do. We could absorb all these children into the public schools without adding a room or a desk.

The American United Research Foundation is now publishing a study by Martin A. Larson of 15 cities which had serious, extensive closings of parochial schools, either complete or substantial closings. In every single situation, Mr. Chairman, Dr. Larson will show in his study, which is now in the press, the children from the parochial schools, as they transferred into the public system, were easily and happily accommodated.

In some situations, the millage rate of taxation for schools on property in the communities was actually reduced. I suppose this was true in part because they drew additional State funds through increased numbers in the schools. But, at any rate, the millage tax for schools did come down.

They found, too, Mr. Chairman, that there was a very strong spirit in support of the public schools which they had not previously encountered, and many of the school administrators commented on this point.

As a result of the enrolling in the public schools of the entire parochial school population, or much of it, they actually had a firmer, sounder, more loyal core of support for the public school system in that community than they had before.

So I think, Mr. Chairman, that to move in the direction of aiding—whether directly or indirectly—the private schools of the church will raise a very serious constitutional problem. I would think that the courts might well strike down this legislation, and I think the time to head it off before it can get that far is right here in this committee. I hope you will do so. Thank you very much.

Mr. Ullman. Thank you, Mr. Lowell. Your full statement will appear in the record.

(The statement referred to follows:)

STATEMENT OF C. STANLEY LOWELL, ASSOCIATE DIRECTOR, AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE

TAX CREDITS

All the "tax credit" proposals under consideration at these hearings have a common shape and purpose. The shape is that of a cash advantage to the parents of parochial and private school students which they must then divert to the benefit of the school. The purpose is to provide indirectly a government subsidy to these institutions.

In this connection it should be pointed out that tax credits for the patrons of parochial and other private schools is a concept of tax abatement entirely different from the various items of deduction currently allowable in reckoning income tax. These are general categorical allowances which presumably benefit society as a whole. The credits are personal cash advantages for individuals contingent on their diverting them to church schools. Such a policy undermines the tax structure and the very basis of government itself.

Even if we concede the point, which we do not for a moment concede, that this is a parent benefit program, constitutionality of such legislation is gravely suspect because of church-state complications. Why is it any more constitutional to subsidize parents in providing a religious education for their children than to subsidize schools to do the same thing? The Supreme Court has already held the latter unconstitutional. What reason do we have to believe the former could escape the stricture of the First Amendment?

The Supreme Court has made it repeatedly clear in a long line of opinions—most recently in *Lemon* v. *Kurtzman* and *Early* v. *DiCenso*, June 28, 1971—that government subsidies to church schools, whether they be direct or indirect, violate the First Amendment. The thought of the Congress bestirring its ingenuity to find ways of circumventing the ban is not very impressive. This is no game of hide-and-seek; now you see it, now you don't. At stake here is the entire arrangement our forefathers wisely planned whereby the churches were to be free and voluntary and government was to keep its nose out of religion.

THE CHURCH-STATE PROBLEM

No matter how the matter is phrased, the tax credits under consideration are for the benefit of church schools. More than ninety percent of the institutions involved are those of churches and of these the great majority are operated by one church which claims the largest constituency of all churches currently operating in the United States. This proposal cannot escape involvement with aid to religious institutions. The plan advanced here indirectly finances church schools. It is a law respecting religion and quite likely respecting establishment of religion. To pretend otherwise—to try to escape the factual situation by one semantic ruse or another—is to be guilty of a political deviousness which is unworthy of the Congress and of the nation. This legislation, therefore, directly involves church-state relations and points toward a drastic re-ordering of the entire relationship which we have popularly designated separation of church and state. Surely this fact calls for caution and pause.

The tax credit means the conferring of a tax advantage on the recipient. If he pays the money for a private purpose—his child's religious education—he receives the equivalent of a check from the government. There is no difference between the government's paying the money to the parent and the parent's being excused from paying the money to the government. It is exactly the same cash situation.

The subsidy is given to the parent for a purpose—so that he may pay it over to the church school. This is a subsidy to the church institution. It is true that the subsidy rests for a moment with the parent—but only for a moment. It quickly passes through this conduit to its intended destination—the church school.

As Bishop William E. McManus, head of the nation's largest parochial system, recently remarked about these proposals: "This kind of federal aid would make it possible for schools to raise tuition in amounts to cover virtually all of their increased costs in the future." (*New World*, January 28, 1972).

It should be evident that this pause with parents is not sufficient to sterilize the money against church-state infection. What is determinative here is not the point of pause but the destination. The real purpose is to finance institutions owned by churches and operated for their sectarian purposes. This is a purpose barred by the First Amendment. What better way to establish a church than to finance its schools?

CHURCH-STATE ENTANGLEMENT

All across the country church officials, scenting subsidy for their institutions, are organizing powerful lobby efforts to pressure the Congress to pass this legislation. That alone should be sufficient to show its unwisdom. One Catholic diocese after another appoints a professional lobbyist to work with a lobby group cleverly named CREDIT which we are told stands for Citizens Relief for Education by Income Tax. This is precisely the kind of pressure and controversy the Founders sought to avoid when they separated church and state and denied government subsidy to religion.

If this legislation passes and the church schools get $200, they will be back for $400 the next year, and more and more with each succeeding year. There will be no end to this kind of pressure as churches battle for an ever larger share of the tax dollar. The controversy in prospect will add another embittering dimension to the political life of the nation—one we definitely do not need.

ERODES TAX BASE

There are a number of practical, economic objections to the tax credits concept for the benefit of church schools. The plain fact is that such a proposal seriously erodes the tax base of the nation. The tax credit advocated here is said to be for a good cause—the preservation of religious schools. But there are many good causes that have their supporting lobbyists just as this cause has. Once you open up this concept of tax credit, there will be no closing it. There will be tax credits sought for this and for that—all of them good and worthy causes. Those with political muscle back of them might well be enacted into law as the tax base progressively erodes and public services fail for lack of financial support. Gentlemen, do not start this wretched charade which can have but one outcome.

Who would make up the sums thus transferred from government to the churches? In one of the proposals the loss in federal income has been estimated at $584 million but would quickly run to a great deal more. Either the services of government would have to be cut or additional taxes would have to be levied on other taxpayers in violation of their equal rights. The ostensible beneficiaries would be a privileged group of parents with children in religious schools. The actual beneficiaries would be church institutions. Those to be subjected to an additional tax burden to carry out such a proposal would be the general taxpayer. There is a great deal of talk these days about a "tax revolt." One can hardly conceive of a more dramatic way to incite it than the legislation proposed here. This legislation would neatly couple the normal aversion to tax paying with the emotional potential of religious differences. This is a combustible combination if ever there was one.

ECONOMICALLY UNWISE

The economy of the tax credit proposals is highly suspect. It would have the effect of channeling government aid into a plethora of private and sectarian school systems which have sprung up or may spring up here and there. It is much wiser from the standpoint of economy to finance one consolidated school system than an inchoate host of private systems.

If the sectarian schools close for lack of patronage, it would still be much more economical to transfer their students to public school classrooms where the declining birthrate has already led to declining enrollment and vacant space.

SOCIALLY AND EDUCATIONALLY REGRESSIVE

The tax credit proposal for the benefit of church schools represents aid to private institutions and aid to the privileged. It would, in effect, make a payment on tuition for children in parochial and private schools. But the only persons who would draw the payments would be those who could gain admission to these institutions—that is to say, a privileged group.

Payments or credits of this kind would represent a subsidy to private institutions which do not serve the general public, but, rather, a selected segment of it. There is all the difference in the world between a school that selects its clientele according to various criteria—religion, scholarship potential, behaviour excellence and the like—and a school that takes everybody.

It is often argued that sectarian schools are completely open to members of other faiths. Certainly so, since this is an excellent method of proselyting. But the schools of one faith would certainly have limited appeal for those of other faiths. It is no accident, for example, that Roman Catholic school enrollment is over 97 per cent Catholic. Comparable figures obtain in other denominational schools. Other forms of discrimination, including racial, are scarcely less marked. The kind of tokenisms often exhibited by these institutions does not alleviate this basic problem.

The general public should not be taxed for privileged, selective institutions from which, in effect, many of our citizens are barred. The public schools are a public service, the most important public service the nation provides. These schools are properly a public responsibility. It is not the function of government to shore up sectarian school systems which their own adherents are no longer willing to support.

Another fact to be noted is that tax credits will benefit only those who are sufficiently affluent to pay taxes. Those below the line for income tax purposes would get nothing at all. The only aid to parents involved here would be to enable them to desert the public schools and place their children in privileged, private institutions. Many would do this rather than stay and solve the problems our public schools face. This would leave the public schools for the rejects and problem cases and, most especially, the poor.

This legislation would, then, subsidize a new dimension in education—privileged, selective church schools. We believe such a legislative goal is neither constitutional nor wise, that it is, in fact, educationally and socially regressive. It would be a long, firm step toward the demolition of our common schools and the segmenting of society along religious, racial and economic lines. We have an example of this kind of thing—an extreme example, but nevertheless an example—in Northern Ireland. We do not want it here.

SUPPLEMENT

The principal legislative purpose sought in these tax credit proposals is to save the Roman Catholic schools. This is the only private school system that is really in trouble. President Nixon called attention to the closing of these schools at the rate of one a day and remarked that something must be done about it if it could be done without violating the Constitution. Tax credits represent an effort to do something on this problem.

It is popularly assumed that the reason for the decline of these denominational schools is financial. Yet the decline in enrollment in non-tuition Catholic schools its quite as marked as in tuition schools. It is not a lack of money so much as a lack of confidence in the schools themselves. This leads to the prognosis as contained in the Fleischmann Report to Gov. Rockefeller that by 1980 this system will continue the decline to about half its present enrollment. Even at present two-thirds of all Catholic children are enrolled in public schools. The people themselves have chosen religiously integrated public schools in preference to separate, sectarian schools.

Sectarian leaders fondly imagine that they can reverse this trend with government money. They should be more realistic. The Fleischmann Report in New York State is one of the most comprehensive studies of this problem ever made. The Report discloses that the decline in parochial schools will go right on during the 1970s and that massive infusions of public funds will make little difference. Such aid would maintain church institutions and operations but it could not halt their decline.

Fleischmann finds that transferring parochial students to public schools is much cheaper than trying to educate children in two or more separate school systems. Fleischmann reports that the saving in operating revenue in the one system as compared with the two would be $415 million during the 1970s. He also found that Catholic schools were scheduled for a deficit of $1.4 billion during that period, if they continued as they were.

A study by Martin A. Larson for Americans United Research Foundation buttresses the point. The study now in press examines 15 communities where parochial schools have recently closed in whole or in part with consequent transfers to the public system. In every case Larson found that the transfers had been effected smoothly and with managable increase in cost. He even found situations in which the real estate tax for schools had been lowered following the closings and transfers because the local school board now drew more state aid. Emergence of a single school system in the community in every case brought strong, united support for the schools which they had not enjoyed before.

It seems evident that instead of using federal aid to shore up a failing sectarian system, we would better serve the public interest by providing "impacted aid" in a very few situations where many closings might create temporary hardship. Over all, the closing of the parochial schools would mean the addition of only about two students to each classroom.

The declining birth rate has now begun to affect the schools which have lost in total enrollment the last two years. There are a half million fewer children entering the schools each year than was the case a decade ago. To fill these vacant seats and rooms with parochial transfers makes more sense than supporting their education in separate systems with duplicate buildings, duplicate administrations, etc.

Mr. ULLMAN. Mr. Corman.

Mr. CORMAN. I assume that what you have been telling us, Mr. Lowell, is that we should not do by indirection what the Constitution clearly prohibits us from doing by direct action.

Mr. LOWELL. That is correct.

Mr. CORMAN. The administration supports this bill in its fullest context, that is, with the negative income tax provision, but demands that we cut an equal amount of money from the budget, selecting public education as the place to cut. Would you care to comment as to whether the public education sector can afford a billion dollar cut at this point?

Mr. LOWELL. That is exactly what I feared might happen. I am not suprised to hear this at all. This has happened in other situations; for example, in Ohio which gave $47 million to the parochial schools with the result that their public schools were cut short and actually had to close up for periods in a number of areas. And I think the same thing is true as the LaNoue study showed in Philadelphia where grants to the private and parochial schools in that State resulted in cutting of funds to the public schools.

This is what we can expect. This is one of the major reasons why we should not start legislation of this kind. It may start with a small grant, but there will be constant agitation for an increase. That has been the case in every State which has adopted this legislation. It went in Pennsylvania from $4.3 to $42 million, increasing year by year as this developed until it was finally struck down by the courts. I think when legislation like this is passed, the public schools are going to be cut. There is not any other way to do it.

Mr. CORMAN. I know that more and more States are relying on State income taxes to support their public purposes. It seems to me that this might present a very bad precedent for States to finance private education with State tax credits.

If the Federal Government passes such legislation and, assuming it is constitutional—if we make that breach—then the States would be invited to do the same thing. Is that a reasonable fear?

Mr. LOWELL. I am sure many States will do this. After all, when we got Federal income taxes we quickly got State income taxes as well. I think this would be true, particularly in a half-dozen States I could name.

Mr. CORMAN. It seems to me that the religious training of the young in every religion is an important factor. Yet, we are probably best disposed to undertake such training completely separate from any governmental activity, including governmental financing. Many of the religions which rely entirely on public education still conduct a rather vigorous religious education for their young people.

Don't you think that this gives us maximum religious freedom?

Mr. LOWELL. Yes; I certainly do. I am a churchman myself. I don't come in here with any hostility to religion in any way, shape, or form. I come here with an ardent support of that arrangement which has kept the Government's hands out of the church and its nose out of religion.

I think when you start moving in this area inevitably this pure teaching of the church, this indoctrination, this instruction of its young, which is a very basic fact in its operation and the imparting of its faith, will be undermined and eroded. I don't want to see that happen. I don't think this is good for the church any more than it is good for the state.

In fact, I can't think of any better way to establish a religion in the formal sense of the word, a State religion, than to finance the schools of that church. I think this is a mistake; it is moving in the wrong direction.

Mr. CORMAN. We have heard a lot about the constitutional freedom of choice of parents concerning the education of their young. Yet, as I understand the law, every State exercising its police power requires children to go to school and further exercises some police power over the quality and curriculum of the nonpublic schools.

So the parents really aren't totally free to make decisions about the education of their children; are they?

Mr. LOWELL. Well, there is a compulsory attendance law in every State now, I think, with one or two exceptions. I think a couple of the Southern States have abrogated that law. But with those exceptions, every State has this and children are required to go up until about the eighth grade or that equivalent in years.

Now recently the Supreme Court did in the case of the *Amish* exempt them from compulsory education above that grade. Below that the requirement is on and is compulsory, that is correct.

I hear we have to have freedom of choice. We have had that for 200 years. A person is free to use other schools than the public. That was established in the *Pierce* case back in 1926. If you don't like the public schools or want something better or want a religious nurture for your child, you are perfectly free to send him to a church school. There is no bar to that. But that is your personal choice. But you do it at your own expense.

Having compulsory attendance laws we provided education as a public service in this country. It is not optioned out to private groups which are subsidized for that purpose. It is a public service like the water supply, the police department, fire protection, only infinitely more important.

Mr. CORMAN. Thank you very much. I think your statement is very useful.

Mr. BURKE (presiding). Mr. Schneebeli will inquire.

Mr. SCHNEEBELI. In connection with the Fleischmann report in New York if this trend from private schools back to public schools continues or possibly accelerates, is it recommended that the public school system then take over and buy out the facilities of the private schools because certainly in a lot of the larger cities the public school system does not have the facilities now to handle the complete primary education group.

So was it contemplated they would buy out the facilities of the private schools?

Mr. LOWELL. I think they depend strictly on the situation. I can show you quite a number of instances in which this has already been done. There are other instances when the closing school should have been closed in any case. It just did not have the constituency and the potential of students. I think it depends on the specific situation, the nature of the problem we face.

Mr. SCHNEEBELI. It seems to me that any community where in the private school population is at least 25 percent or more of the total school population there should be some arrangement made between the owners of the two facilities.

Mr. LOWELL. Yes; I would think so.

Mr. SCHNEEBELI. Thank you. That is all.

Mr. BURKE. Mrs. Griffiths will inquire.

Mrs. GRIFFITHS. I would like to ask you. Does your organization have a position on the regents' exam method they use in New York? One of the finest teachers in the city of Detroit came to me the other day and said that one of the things wrong with the public schools is that the person who does the teaching also does the promoting. The school system is a unity unto itself. It is judge and jury.

She said this isn't true of any school in Europe. Of course, the only State in the United States where it is not true is New York. Do you think we should initiate a national examination that every child must pass before he is moved to the next class? Do you have a position on that?

Mr. LOWELL. No; we really don't. You are getting into a very serious problem there. I do note, however, that there are, and I am sure you are aware of this, certain college board examinations that are taken by all students. This, in a sense, is what you are talking about.

Mrs. GRIFFITHS. Yes. The difficulty is that we have arrived at a place in American education where the teacher passes on problem students. You know, she is only going to put up with him for 1 year and on he goes to the next teacher whether he knows anything or not. She tells me that the University of Michigan and Michigan State University recently have lowered their entrance requirements for some students. She said, "You are getting this thrown back in your face in the classroom."

The student says, "I don't have to learn because I can go on whether I know anything or I don't."

Mr. LOWELL. This is one of the many serious problems that we have, Mrs. Griffiths. Of course, I would toss this back to the private schools and the parochial schools, too, because I am aware that they eliminate their problem cases.

Mrs. GRIFFITHS. Of course, it would apply to both public and private schools if you had a system of exams.

Mr. LOWELL. Apparently the public shoots them to the next grade and the parochials kick them out.

Mrs. GRIFFITHS. Would you not eliminate this problem if you had a system in which the people who were doing the teaching were not also the people who gave the exams?

Mr. LOWELL. Perhaps so.

Mrs. GRIFFITHS. Thank you very much.

The **Chairman**. Anything further?

Mr. Karth will inquire.

Mr. **Karth**. Thank you, Mr. Chairman.

Mr. Lowell, I detect a conflict in two of your major arguments. I would like to clear this up in my own mind. I don't ask the question with any malicious intent whatsoever. You suggest that the parochial schools today will have a declining enrollment by 50 percent in the next decade. You further suggest that whether this bill becomes law or not that decline will in all probability continue. On the other hand, you suggest if the bill does become law public schools would become a giant wastebasket for rejects, in part at least because the great middle class would send their children to private schools. I can't really see the decline of 50 percent in parochial and private school enrollment on the one hand and a major decline on the other hand in public school enrollment.

Will you clear up that conflict?

Mr. **Lowell**. I think it would speed up the exodus from public schools over into the parochial. I think what we meant was that if the situation goes on as it is the decline will be pretty consistent, but that if this legislation passes, some children will be sent into the parochial schools to take the place of those who are leaving. These will be the better students—a select clientele, a very small cadre of the more intelligent, better qualified students. These will be removed from the public school system.

I think it is very unfortunate that we should have it. What I said was I think that people tend to run away from problems rather than to stay and solve them, which I think they should not be encouraged to do.

Mr. **Karth**. Thank you.

The **Chairman**. Any further questions? If not, we thank you, Mr. Lowell, for coming to the committee and giving us your views.

Mr. **Lowell**. Thank you, Mr. Chairman.

The **Chairman**. Our next witness is Mrs. C. Bradford Lundy, Jr.

Mrs. **Griffiths**. Mr. Chairman, Mrs. Lundy is a resident of the Detroit area and a member of one of Detroit's most distinguished families. She has great expertise in this field, and I am delighted to welcome her to this committee.

The **Chairman**. Mrs. Lundy, you are indeed fortunate to have Mrs. Griffiths present you to the committee because whatever you may now say is the law.

STATEMENT OF MRS. C. BRADFORD LUNDY, JR., INTERNATIONAL ORGANIZATION OF CATHOLIC ALUMNAE

Mrs. **Lundy**. Thank you, Mrs. Griffiths. Maybe I should quit right now.

Thank you for your kind introduction and thank you for this opportunity also to speak before this illustrious committee on such an important issue as we are facing today.

I would ask you to forgive some of the errors that might exist on the typed copy. We gave this over Western Union and that can get a little frazzled sometimes. I would like to start out by again thanking you and saying that it seems that much of the testimony being offered to this committee is on behalf of organizations which obviously enables you to hear the comments of many people in an assorted period of time, but to change the pace a little and turn the issue of education to another facet, I will speak as a parent and as a woman closely associated with parents from both the affluent and more deprived neighborhood.

If these credentials as to my background in education and community work would be of any value in giving credence to my testimony, I offer the following:

I have just concluded a 3-year term as chairman of my parish board of education; I am govenor of the Michigan Chapter of International Federation of Catholic Alumnae; I have served on the board of women for the United Foundation which is the collecting arm of our Tourch Drive and I currently am on the women's committee for United Community Services, which is the spending arm of our Torch Drive. Also I am now president of the League of Catholic Women of Detroit, an organization which operates five social service agencies in our inner-city. It is in this latter capacity particularly that I have close contacts with parents in our community centers in both black and Latin neighborhoods. It is in this capacity, too, that I have had firsthand experience with educational needs of adolescent girls in our psychiatric treatment home, and of young women out of corrections institutions now in our rehabilitation program.

My concern is threefold: (1) For quality education for all children; (2) for an equitable investment in the education of all children; and (3) for the protection of the family unit and the promotion of the rights, human dignity and freedom of parents and children in education and I know that this concern is shared by all parents, whether they reside in suburbia or in the ghetto.

But let's face it. Whereas the more affluent parent can normally control the quality of their children's education and insure their reception of an equitable share of the investment made by government, this can hardly be said of the lower-income parents. When we come to the question of preserving their family integrity and values, and of exercising their rights to choose the school and the value system they wish for their children, the more affluent parent can usually afford taxation and tuition, but the lower-income parent has no such ability and, therefore, is locked into the government-operated school system.

The result? In actual fact a greater degree of government monoply in education and a corresponding lack of constructive competition, diversity, and quality—also a lack of schools in the inner-city area which can be particularly equipped to meet special education and psychological needs of inner-city children and parents.

As I have pointed out, I am quite familiar with these needs and with the tremendous desire of these parents to be able to exercise this right, to choose what they see is necessary and proper for their children. And in spirit the result is a helplessness among under-privileged parents and children in the face of the fact that they have no choice that they cannot control their schools, that they must place their children in a school designated by the system and under values proscribed by government which values may be contrary to their family integrity and personal concerns.

It should be pointed out also that those inner-city parents who do find room in a nonpublic school for whatever reason must usually depend on a good share of charity to cover cost rather than be able to experience the human dignity of freely exercising their rights as parents to choose and their children's rights as citizens to share in educational tax benefits.

My point here is to relate this condition to the bills being considered, particularly to H.R. 16141. Your purpose of this bill seems to be a double-barrel job on aiding educational financing in title I, by initiating revenue sharing as a means of Federal equalization funding to States; and in title II by providing tax credits to parents who paid tuition to nonpublic schools.

But I would ask you to look at how this double-barreled program will affect parents.

In suburbia and more affluent areas most parents pay enough Federal tax to take full advantage of the $200 credit. On the public school level the payment per child will not be as great as in the inner-city—at least this is what I have figured from the way the bill was written—because there is less percent of equalization required. As a result, there will be less increase in public school cost, therefore less force to increase nonpublic school expenditures, and more parents financially able to support the nonpublic schools in the more affluent areas.

But what in the less privileged areas—in the inner-city and in the poor and minority communities? The average parent would not pay enough federal tax to take advantage of the whole, or even part, of the tax credit, thereby offering them no greater opportunity to exercise their rights and to experience the human dignity of choosing the value system they wish for their children, or of choosing the schools more specifically geared to their children's needs.

On the public school level more funds will be expended because of the greater amount of equalization needed, and with this increase per-pupil expenditure, a corresponding increase in nonpublic schools cost will be experienced also since they must maintain quality standards in comparison with those in public schools. Yet remember, the parent will have received little or no relief under tax credit to cover these costs.

The overall outcome then could well be that H.R. 16141 will further enable more affluent parents to choose nonpublic schools, and will further destroy the diversity and constructive competition as well as the specific programs offered by the nonpublic school sector in less affluent areas. But most seriously, in my feeling anyway after my experience, it will further destroy the rights of poor and minority parents to exercise their precious human rights in education.

Many opponents of nonpublic schools cite them as havens for segregation, and cite aid to either schools and parents as promoting segregation; on the contrary, it is the very fact of no aid to parents or schools that has made it next to impossible for the poor and minority groups to choose nonpublic schools, and passage of H.R. 16141 will only exaggerate this condition.

That is the bill in the present condition as I see it. Please do not think I would oppose the concept of this bill in total.

Instead I would offer suggestions to make it achieve the purposes for which it was intended. In title I there must be provisions for sharing of equalizing funds with nonpublic schoolchildren. This battle was fought long and hard over ESEA and the principle was established that in order for public school districts to benefit programs must include participation of similar nonpublic schoolchildren. In no way should Congress turn back the hands of time and give up its leadership roll in honoring the rights and needs of both public and nonpublic schoolchildren in this country.

Relative to title II, some accommodations should be made to compensate for tuition payment made by parents who pay little or no taxes, remembering that they have as much of a constitutional right to choose as does a parent who pays higher taxes. Our President, his Committee on School Financing, congressional and educational leaders all recognize and publicly speak to the needs of the continued existence of the diversity and constructive competition offered by nonpublic education. Again as a parent I am certain this committee in its deliberations and in its revisions on all pending educational legislation will give most serious attention to the needs and rights of all children and parents, whether in publico r nonpublic schools and whether in suburbia or in the inner-city.

Thank you.

The CHAIRMAN. Mrs. Lundy, we thank you for your very fine statement.

Mrs. Griffiths.

Mrs. GRIFFITHS. I have no questions.

The CHAIRMAN. Mr. Corman.

Mr. CORMAN. Thank you, Mr. Chairman.

The administration, in supporting this bill, indicated that we would be obligated in the Congress to make a commensurate cut in spending because of fiscal problems in the overall budget. They selected the probable place as Federal aid to public education. Would you care to comment as to whether that is a reasonable place to cut close to a billion dollars?

Mrs. LUNDY. You are speaking in terms of the appropriation necessary for this bill and you are suggesting if this is done, this should be cut from title I of the bill I was speaking of?

Mr. CORMAN. The administration indicated that whatever we lost in revenue, we should make a commensurate cut in expenditures. Now we spend money for lots of things. The administration's proposal is that we ought to look to the Federal funds that go for education as the logical place to make that cut.

You have obviously had a great deal of experience with both public and private education. Is the public sector in a position to absorb a $980 million cut in Federal funds?

Mrs. LUNDY. I think the question again is funding all children's education because we have a responsibility to all children, not just to children who choose one type of school system that might be operated by the Government. It is not a question so much of taking away just from the public schools. If we don't recognize the rights of children in the nonpublic schools, then these children eventually will end up in the public schools and you will find a greater cost of educating those children in the public schools.

So I think the main concern should be, as I pointed out, to consider the needs and the rights of all children. Where the actual cut will come and how is hard for me to say because I am not that familiar with the mechanics of the funding.

Mr. CORMAN. But you are familiar with the needs in public education, particularly in the inner cities, which is where we are apparently attempting to put Federal money.

Mrs. LUNDY. Yes.

Mr. CORMAN. Are those schools in a position to absorb a billion dollar cut in the Federal funds they are getting or should we look elsewhere?

Mrs. LUNDY. Are they in a position to absorb thousands of other children, too—that is another question—at full cost? We are talking about partial cost and letting the parent exercise his primary and constitutional right to keep him in a school other than that operated by the Government.

I think both sides have to be weighed.

Mr. CORMAN. We have kept the scale tipped at less for the moment in favor of the $980 million tax cut. Now I am trying to find out from you if the public education sector is the place we should make that cut or if we should look to some other Federal expenditure. In other words, assuming that we are going to cut the taxes and lose the revenue, we will by that device keep the private school student from going into the public schools.

Now does that mean that the public schools will need a billion dollars less next year?

Mrs. LUNDY. That is rather hard to answer. I think we don't ever want to cut money from education because it certainly is needed. But it is a question of where to allot it. That is a difficult question to answer.

The CHAIRMAN. Are there any further questions?

Mr. CAREY. Mr. Chairman?

The CHAIRMAN. Mr. Carey.

Mr. CAREY. I would like to welcome the witness who represents a very distinguished international organization of women and commend her particularly for her dedication to the utilization of the nonpublic option for the poor. I would like to make it clear to you that as drawn, H.R. 16141 does make provision for what I call a tax remission and what others call a negative income tax, so that poor persons who do not have tax liability, who do not earn income, would receive funds to allow them to pay some portion of the cost of having their children attend a nonpublic school.

Are you aware of that?

Mrs. LUNDY. I was made aware of that this morning, Congressman. I don't see those words in the bill that I have, that I studied. I was shown a copy of the reportings that came out of here where you have spoken to this and said there would be a remission. This is vital, I think this is very important not only from the financial aspect of it, but again as I point out, for the human dignity and the rights of these parents.

Mr. CAREY. Far be it for me to defend the administration on its attitude toward education, but for the record the reference was made to other funds which would be made available if Congress saw fit to select other funds to apply to this particular program in the light of reduced congressional expenditures. Mr. Weinberger, of the

Office of Management and Budget, said that he felt the impacted area program would be one that Congress should take a look at in terms of what it was intended to do and what it is doing today.

In all fairness none of us voted to cut impacted area funds; it is just too big a slice of motherhood for anybody to go near. So what is talked about in terms of theory is practically impossible. There is no Congressman today who has the temerity to suggest a billion dollar cut in educational funds when the Federal Government has only begun to move in this area.

With all deference to my colleague, I am not going to participate in any game that starts a fight between the public and nonpublic schools about cutting one sector to finance another. That is the kind of hostility that was bred before we passed the Elementary and Secondary Education Act in 1965, which later brought harmony and cooperation in American education.

We want to cultivate and always encourage that harmony. I think that is what you are seeking to do; is that correct?

Mrs. LUNDY. Very much so. And particularly, and I seem to be repeating myself here, for the less affluent parent. It has sometimes been pointed out by those who oppose this type of legislation that it is going to allow the better off parent to take his child out of the public school.

I think it is very obvious that it has been because the poorer parent cannot afford to make the choice that there have been less minority groups and less underprivileged children in the nonpublic schools. Yet these people are crying for the same opportunity. I know the girls in some of our rehabilitation programs need the special programs that can be offered in specialized schools and yet there is no opportunity at all.

Mr. CAREY. As one of the original authors of the Elementary and Secondary Education Act, title I, we had high hopes for that program, but due to lack of sufficient funds to fully fund the program it has been impossible to get that program to the target areas that we designed it for; that is, to all the children.

Furthermore, because there has been insufficient money in the program, on three different occasions the Commission, the watchdog Commission that was set up to monitor the operation of this program, has said that unfortunately the programs designed for nonpublic school participation have not been fully utilized for a variety of reasons and those children are not getting all the benefits even though the law was designed to give them benefits.

That is an argument then for an alternative approach for ESEA, not to in any way diminish ESEA. We want to fund that fully, we want to make it more operational, but it is all the more reason why we need something in addition to ESEA title I to help reach the poor as well as the middle-income parents.

Mrs. LUNDY. I think particularly, too, if I might add, that ESEA is geared more to categorical grants specifically for extracurricular purposes. I think what is necessary is some operating funds that can be used for operating purposes because if you don't have a solid base to begin with, all your extra niceties don't make that much difference.

Mr. CAREY. Thank you very much.

Mr. CORMAN. I just want to point out it was not my idea that we find that $989 million in the public education sector. It was the administration's. I must say that I get very nervous about whether we are going to have a $250 billion expenditure ceiling. If we do and whatever other actions we take, we are going to have to make some cuts. It was not my idea. You have me convinced.

Mr. CAREY. In finishing that point let me be precise and specific. Mr. Weinberger referred to only one program; namely, impacted area program. We know the friends of that program are legion and it will last forever.

Let it be said again for the record that is not the first administration that recommended cutting the impacted area program. If my memory serves me correctly, the previous administration under a Democratic President also recommended the reduction or elimination of the impacted area program because it no longer served the purpose for which it was intended. The Johnson administration asked to apply those moneys to the inner city and other programs where the social impact was at least as great as the impact of the military and defense establishment. It is not one administration that made that recommendation, it is two in a row, but it is not going anywhere and you can bet on it.

Thank you.

The CHAIRMAN. Mr. Gibbons.

Mr. GIBBONS. Mrs. Lundy, could you tell me, in your experience, what is the cost of education on a per-pupil basis in the private schools that you are familiar with and the public schools in the same general area? Can you compare the cost per pupil?

Mrs. LUNDY. It is a very broad and wide spectrum. It depends really on where you are, whether you are speaking elementary school or secondary level.

(The following was received for the record.)

In answer to Mr. Gibbons question on costs of nonpublic school per pupil:
Detroit metropolitan area Catholic schools, 1971–72:
  elementary—$375; and
  secondary—$525.
Detroit metropolitan area private schools, 1971–72:
  $600 to $1,500, depending on grade level and "prestige."

NCEA (NATIONAL CATHOLIC EDUCATION ASSOCIATION) REPORT FROM GREAT LAKES AREA

	1970-71	1971-72
Elementary	$263	$301
Secondary (diocesan)	547	586
Secondary (private)	510	691

Mr. GIBBONS. Either one or both of them.

Mrs. LUNDY. The figures I have are probably from the last year or so. I think you can figure about $500 per child on the grade school level and $600 or $700 per child on the high school level. When you get into your more specialized schools, some of your college prep schools, high schools, the cost is higher.

Mr. GIBBONS. Is that the public school or private school we are talking about? Would you go over those figures again for me? The per pupil cost last year, you said, was $400.

Mrs. LUNDY. $300 to $400 on the grade school levels. Now I am speaking of the nonpublic school. On the high school level you can run from $500 to $700 to $800, depending on the type of school.

Mr. GIBBONS. Do you know how that compares with the public schools in the same area?

Mrs. LUNDY. I would say it is quite a bit less. In my own particular area the public school expenditure per child is about $1,200. I think the average across the State of Michigan is $900 to $1,000 now.

Mr. GIBBONS. How do the private schools do it so cheaply?

Mrs. LUNDY. Well, maybe because they have to find the money themselves, it is done a little more efficiently, and I think many extra programs have to be cut out. Some people again speak about the fact that the nonpublic schools dump the child if he has problems, et cetera. I don't think that is necessarily always the case, but if it does happen it is probably because the funds are not available for all the special counseling programs and additional programs.

But this is one reason why the costs are lower, because of dedicated services and because of the fact that many of the frills are cut out. I think a good part of the administration costs are cut down, too.

Mr. GIBBONS. Is this $300 to $400 in the elementary schools and $500 to $800 in the upper levels the cost to the parent or is this the total cost?

Mrs. LUNDY. This is total cost, not to the parent.

Mr. GIBBONS. Thank you, ma'am.

The CHAIRMAN. Are there any further questions? If not, Mrs. Lundy, thank you again for your very fine testimony.

Mrs. LUNDY. I thank you for the opportunity and for your great concern for all children.

The CHAIRMAN. Thank you.

Our next witness is Mr. Edd Doerr.

Mr. Doerr, if you will identify yourself for our record by giving us your name, address, and capacity in which you appear, we will be glad to recognize you, sir.

STATEMENT OF EDD DOERR, JOINT WASHINGTON OFFICE FOR SOCIAL CONCERN, REPRESENTING THE AMERICAN ETHICAL UNION, THE AMERICAN HUMANIST ASSOCIATION, AND THE UNITARIAN UNIVERSALIST ASSOCIATION

Mr. DOERR. My name is Edd Doerr. I am with the Joint Washington Office for Social Concern, which represents three religious bodies: the American Ethical Union, the American Humanist Association, and the Unitarian Universalist Association.

Parenthetically I might note I am a product of parochial schools and that I am a teacher by profession, having taught in both public and private schools.

Our three groups are best described as embracing the liberal religious tradition in America. Though separate in our corporate structures, we share many ideals and principles. Common to our three traditions is a sturdy allegiance to the constitutional principle of separation of church and state. Religion, individual liberties, and democracy have done well in our country largely because we have remained faithful to the separation principle hammered together on the anvil of experience by our Founding Fathers.

Our three groups are also deeply concerned for the future of democratic public education. In this concern, we are in the tradition of the father of the American public school, Horace Mann, who happened to be a Unitarian.

The tax credit proposals introduced in the Congress in recent months, though varying in detail, all raise very serious constitutional and public policy questions.

These proposals all seek to provide public assistance and support to parochial and private schools by means of Federal income tax credits to reimburse parents for tuition paid to nonpublic schools. These proposals are almost certainly unconstitutional.

The U.S. Supreme Court ruled, on June 28, 1971 (*Lemon* v. *Kurtzman*, 403 U.S. 602), that State programs of aid to parochial and private schools, through "purchase of services" and teacher salary supplement plans, produced "excessive entanglements" between government and religion and therefore violated the First Amendment.

The sound reasoning of the Supreme Court was applied by three-judge Federal courts in Pennsylvania and Ohio in April of this year, which unanimously held unconstitutional State plans for reimbursing parents for tuition paid to parochial and private schools (*Lemon* v. *Sloan*, 340 F. Supp. 1356, E.D. Pa., 1972; *Wolman* v. *Essex*, — F. Supp. —, S.D. Ohio, 1972).

The Ohio Federal court—which, incidentally, has a tax credit measure currently before it—held that the "substance and direction" of the tuition reimbursement program was "simply to transfer public moneys to denominational schools." The court held that "it is of no constitutional significance that state aid goes indirectly to denominational schools * * * through the medium of parental grants. Since the potential ultimate effect of the scheme is to aid religious enterprises, the establishment clause forbids its implementation regardless of the form adopted in the statute for achieving that purpose."

The Pennsylvania Federal court, in striking down a similar tuition reimbursement plan, held that "the state has no more power to subsidize parents in providing a religious education for their child than it has to subsidize church-related schools to do so."

Ninety percent or more the the nonpublic schools in the country exist primarily for the purpose of religious instruction, and they are, in fact, religious institutions. I remember my own parochial school days very well, and I can attest to the truth of that statement. There is no significant difference between tax credits to aid parochial and private schools and the reimbursement plans found unconstitutional by Federal courts in Ohio and Pennsylvania.

These rulings, of course, are both, I believe, on appeal to the U.S. Supreme Court at this time.

In these parochiaid cases, the Supreme Court and lower Federal courts have also warned of the "divisive political potential" of legislation designed to aid sectarian schools. That divisive potential is clearly in evidence in this year's election campaigns.

If tax credits or any other forms of parochiaid are adopted, operators of parochial and private schools will campaign and lobby to see that the amount of aid rises to approximate that provided to our public schools. This process will pit church against church, faction against faction within churches, and brother against brother.

But beyond the constitutional objections to tax credit plans are many public policy objections. I know the committee print of the bill indicates there would be a negative income tax or remission feature of some sort in this legislation, but that is really a grant to reimburse parents for tuition. These have already been held to be unconstitutional by unanimous three-judge Federal courts in two States.

1. So these tax credits are economically regressive. They can benefit only those parochial and private schools serving families of average or better income. These plans will do nothing for poor families who pay little or no taxes. Federal educational policy should be aimed at equalizing educational opportunity, not at shoring up private schools which already serve a more affluent population than our public schools.

2. Tax credit plans are economically unsound. The $200 per student plan, for instance, would cost the Federal Treasury at least $1 billion annually to start. This money could be made up only by increasing taxes or cutting public programs, such as education. Further, the experience of other countries is that it is more costly and less efficient to support multiple-school systems than to support a single system serving all children iwthout discrimination. This is true in the Canadian provinces which do this, in the Netherlands, in Northern Ireland, and elsewhere.

3. Contrary to widespread propaganda, the present decline in parochial school enrollment is causing no serious problems for our public school systems. The children in our public and nonpublic schools last year, grades 1 through 12, were born in years in which an average 4.13 million children were born each year. But beginning in 1966 an average of only 3.6 million children have been born each year. This means that from now until the early 1980's, total school enrollment will drop by about a half-million children per year. Since there are only a little over 5 million children in nonpublic schools, our public schools will easily be able to absorb transfers from parochial and private schools without additional cost.

4. Furthermore, tax credit aid to nonpublic schools at any politically realistic level will not arrest the parochial enrollment decline. This is the conclusion of the Notre Dame University study, "Economic Problems of Nonpublic Schools," produced in 1971, under the auspices of the President's Commission on School Finance. This is also the conclusion of a report, "The Collapse of Nonpublic Education: Rumor or Reality?" produced for New York Governor Nelson Rockefeller's Fleischmann Commission last year.

A Boston College study, "Issues of Aid to Nonpublic Schools," produced for the President's Commission on School Finance, concludes that "it would be wrong to say that recent declines in Catholic school enrollment were caused, to any significant extent, by tuition increases" and that "the causes seem to be geographic movement by families and changes in taste."

5. Tax credits would be tax support for the various kinds of separatism, discrimination, segregation, and imbalance found in parochial and private schools. At least 90 percent of all students in nonpublic schools attend denominational schools. These schools, of whatever faith, approach 100 percent denominational homogeneity of both student bodies, faculties, and governing bodies. Catholic schools, for example, are 97.3 percent Catholic in enrollment, according to a 1970 study by the National Catholic Educational Association, "A Statistical Report on Catholic Elementary and Secondary Schools for the Years 1967–68

and 1969-70." Lutheran and Jewish schools are similarly homogeneous.

Nonpublic schools are slightly over 5 percent black in enrollment (Otto F. Kraushaar, "American Nonpublic Schools," Johns Hopkins Press, 1972) while our public schools are 14.5 percent black (HEW news release, January 4, 1970).

We have heard witnesses from New York City and elsewhere. In New York City the public schools are 60.5 percent nonwhite. The Roman Catholic schools of New York City are 12.5 percent nonwhite. The Jewish schools of New York are only 0.3 percent nonwhite.

I think Congressman Waggonner, who was here yesterday, made an excellent point when he spoke of freedom of choice. Witnesses favoring the tax credit legislation talked about freedom of choice to attend schools which are segregated by religion and often by race and in other ways, and yet, perhaps, other parents who would prefer some sort of freedom of choice to send their children to neighborhood schools are denied this. There is a certain inconsistency here.

Kraushaar also shows that nonpublic schools enroll only one-fourth as many impoverished students—4 percent—as public schools—16.7 percent.

Nonpublic secondary schools are often segregated by sex and generally discriminate in admissions against students not bound for college. I might add also that since nonpublic high schools are generally college prep schools, whether they are private or religious, their costs are much lower than public schools, which have to provide expensive vocational education. This is one of the reasons the public schools cost more—they have to do more for more pupils of more different kinds.

Tax credit for nonpublic schools could only aggravate the racial, academic, and other imbalances in our public schools. It would tend to produce a parochial-private school network serving white, affluent, college-bound youngsters, while the public schools would increasingly serve mainly the poor, the disadvantaged, racial minorities, and problem children. It would further the divisions and centrifugal forces straining to pull our society apart. Northern Ireland is a good example of what happens when Government funds support competing school systems segregated by religion.

We might note also that it has been said by many of the advocates of tax credits that parochial schools in innercities help to stabilize communities. It is true, however, that normally in the innercities you will find the parochial and private schools are far, far whiter than the nearby public schools. What this means is that by providing havens to escape public school racial integration, these schools are able to continue functioning.

Just in the last few weeks, a Father McIlvane of a black Catholic parish in Pittsburgh has charged publicly that if there were no racial problems, racial integration situations, in the public schools of Pittsburgh, fully 50 percent of the seats in Catholic schools would become empty overnight.

So, actually, rather than stabilizing communities, nonpublic schools in our center cities—in the U.S. Civil Rights Commission report back in 1966 or 1967—they actually contribute to racial isolation in the innercities because they provide a haven for people trying to get away from public schools and, by furthering racial imbalance of the public schools, they encourage the flight to the suburbs.

6. Public opinion opposes public aid for parochial and private schools. Referendum elections in Michigan and Nebraska, in 1970, registered opposition to such aid by a margin of 57 percent to 43 percent. These were not an opinion poll; they were actual referendums.

Just this year, a poll of 18,000 constituents by Congressman William A. Steiger of Wisconsin's Sixth District, which has a heavy nonpublic school population, showed opposition to parochiaid by a margin of 62 percent to 38 percent. A Gallup—Catholic Digest poll, in 1966, showed 50 percent to 28 percent opposition, and a similar survey, in 1969, by "A Study of the American Independent School" showed 59 percent to 37 percent opposition.

Polls in Maryland and Illinois, in 1970, showed 62.5 percent to 35.3 percent opposition and 59 percent to 39.2 percent opposition, respectively. A similar poll in Ohio, in 1971, showed opposition at 61.7 percent to 37 percent. It is rather clear that the public does not want to have tax funds used to subsidize nonpublic schools.

7. Subsidizing nonpublic schools by any means will encourage the proliferation of nonpublic schools at the expense of the public schools, eroding their financial and psychological support.

8. We hear much from the tax credit advocates about preserving pluralism and diversity in education. Now, there is some mythology here. But within a given nonpublic school, we find a decided lack of diversity and pluralism. It is in our public schools that we really find pluralism and diversity, with children and teachers of all creeds, races, classes, and conditions working together in the American way. Public tax policy must not be used to diminish the access of children to our most pluralistic institutions. Children in parochial schools are denied access to children of other faiths and traditions. As a parent and teacher, I think this is educationally harmful to children. While parochial schools have a right to be selective, it is bad public policy for us to subsidize the segregation of children away from children of other religious traditions and other backgrounds.

We conclude, Mr. Chairman, with a plea that this committee reject all tuition tax credit plans as violations of the constitutional principle of separation of church and state and as bad public policy. Federal aid to public education should be increased in the interest of promoting ever greater equality of educational opportunity. If the decline of parochial school enrollment in a few urban areas adds to already existing public school finance problems, as in New York City or Philadelphia, for example, we would favor special "influx aid" to urban public school systems, as recommended by Governor Rockefeller's Fleischmann commission.

The tax credit plan would be a giant step backward for religious liberty, public education, church-state relations, and the American democratic way of life. Thank you, Mr. Chairman.

Mr. ULLMAN (presiding). We thank you, Mr. Doerr, for your very fine statement.

Are there any questions?

Mrs. GRIFFITHS. Yes.

Mr. ULLMAN. Mrs. Griffiths.

Mrs. **Griffiths**. If all the children in parochial schools in the city of New York were forced into public schools, what would the ratio of black to white be?

Mr. **Doerr**. Probably 40 percent black, but I am not exactly certain of that.

Mrs. **Griffiths**. Have you ever observed what happens to a public school when it becomes 40 percent black?

Mr. **Doerr**. If all the public schools in the metropolitan area had the same ratio of black and white students, there would be no problem, because there would be nowhere to flee.

Mrs. **Griffiths**. That is a great statement, but it does not work out. Let me give you the real facts. I have three schools in my district that have gone from all white to all black in a period of about 3 years. Detroit was probably more under the gun in this situation than any other school system in the country, and it is affecting most the district in which I live.

Now, the truth is that if you remove those parochial schools, you are going to hasten the flight to the suburbs. You just cannot get around it. Because the people who live in that district, if they have to, will be able to move.

What you really are doing in this situation is not only changing the housing pattern but you literally are confiscating white property.

Mr. **Doerr**. According to the U.S. Commission on Civil Rights report about 5 or 6 years ago, the parochial and private schools in the inner cities, rather than alleviating racial imbalance in the public schools, are a cause of it; by draining off white students, they put the public schools into a racial imbalance and stimulate the flight to the suburbs.

Mrs. **Griffiths**. That may be their theory, but I would like them to come and look at the schools of Detroit. They can have a new view of the thing. It does not work out that way. If you put all of the white children in Detroit's parochial schools in the public schools of the city of Detroit, you are not going to change it that drastically. However, when a school becomes 20 percent black or more, you begin to hasten the flight of the whites. At 50 percent it is panic.

Now, I have watched it. This has happened at every school in Detroit.

Mr. **Doerr**. This is true in many communities around the country, but the existence of nonpublic schools causes racial imbalance in the public schools, and this is one of the root causes of the flight to the suburbs.

Mrs. **Griffiths**. It is so tiny——

Mr. **Doerr**. Not according to the U.S. Commission on Civil Rights.

Mrs. **Griffiths**. The U.S. Commission on Civil Rights had an ax to grind. They had a theory of what ought to happen, in my judgment, so they issued a report to fit their theory. But, look at reality. This is not the way it happens at all.

Mr. **Doerr**. I live in a county with 170,000 students in the public schools, Prince Georges County, Md., the 10th largest school district in the United States. It is 20 percent black, 80 percent white. We have 100 percent black and 100 percent white schools. The Federal court in Baltimore has just ordered the county to complete the dismantling of the segregated school system which had existed prior to 1954.

We have found, for instance, that by busing fewer children than are currently being bused in our large school district, we can achieve an exactly 80-20 racial balance in every elementary, junior high, and secondary school in the county with less busing and less cost. This would mean nowhere for anybody to flee if they want to flee a school.

Mrs. GRIFFITHS. You may be able to do that in your county, but the Detroit system is 70 percent black now. It is just like the District of Columbia. Did that work in the District?

Mr. DOERR. The District is a very special place, but I understand the Federal courts in Michigan are working on some proposal to perhaps integrate the Detroit schools with suburban schools and thereby alleviate the problem.

Mrs. GRIFFITHS. You are right. Let me ask you a second question. Once this has been done, what I would like to know is the Supreme Court's plan for taxation to support these school systems. The cost of the buses in Detroit has been variously estimated from $40 million to $100 million. What kind of plan will the courts offer to support these school systems?

Mr. DOERR. I think the State of Michigan and Governor Millikin have a lot of ideas as to how we can solve school financial problems in Michigan.

Mrs. GRIFFITHS. Mr. Allison Green is the treasurer of the State of Michigan. When the judge said, "Buy the buses by 5 o'clock tomorrow afternoon" and the participants in the suit said, "We have absolutely no money whatsoever; you would have to ask the treasurer of the State of Michigan," the judge said, "Well, I make him a participant in this suit right now." Michigan does not have that money, either. How will these systems be financed? Does the court have the authority to say to the appropriations committee, "Close the prisons and close the hospitals, to provide the money to buy the buses"?

Mr. DOERR. Our country spends a smaller percentage of its total annual GNP on education than some poorer countries.

Mrs. GRIFFITHS. That has nothing to do with this.

Mr. DOERR. We have the money.

Mrs. GRIFFITHS. The need is immediate. What is the court going to say? Can the court tell the taxation committee, "You must levy the tax?" If this is true, why are we sitting here? If the court can make these determinations, you don't need the Ways and Means Committee of Congress and you don't need legislators. The court can make the determination.

Mr. DOERR. That problem, of course, is beyond the scope of the present piece of legislation.

Mrs. GRIFFITHS. That is the whole problem. Everybody is living in a sort of dream world in which they describe how it ought to work. How did it really work? When you finally got Federal aid for education in this country, how did you get it?

Mr. DOERR. How was Federal aid to education won in this country? It was passed in 1965.

Mrs. GRIFFITHS. Look at the compromises that had to be made. First, you had a group which, for many years, had been saying, "We oppose all Federal aid to education. School taxes must be levied at the local level." Then you had a group which said, "We will not participate unless aid is given to nonpublic schools." And you had a third group, which was not the majority, which advocated some Federal aid to education. You had to make a compromise.

Mr. DOERR. According to Dr. Leo Pfeffer, who is the leading constitutional authority on this, in 1965, Congress had the votes to pass Federal aid to education without any benefits to nonpublic schools. The Johnson administration chose to make this compromise, but it was not necessary to do so to get the votes to pass the legislation.

Mrs. GRIFFITHS. When, since then, has Congress had the votes to pass anything?

Mr. DOERR. Congress manages to do its business from year to year with reasonable satisfaction.

Mrs. GRIFFITHS. It seems to me you really are looking at a dream world when you announce that the money is going to be made available. The courts are totally unrealistic. If the courts can do all these things they are presuming to do, then, I submit, legislators aren't necessary. Let the Courts determine where the money is coming from. I don't understand it.

Mr. DOERR. With a little tax reform and closing of loopholes, we might well provide——

Mr. ULLMAN. Which one?

Mrs. GRIFFITHS. Are you married?

Mr. DOERR. Yes.

Mrs. GRIFFITHS. Does your wife work?

Mr. DOERR. Yes.

Mrs. GRIFFITHS. I am for cutting out income splitting. How about you?

Mr. DOERR. I would go along with it.

Mrs. GRIFFITHS. That is great, but I would have a great deal of trouble with the rest of this committee on it.

Mr. DOERR. I think two of the recent Presidential aspirants—Senator McGovern and Governor Wallace—have spoken of the possibility of realizing considerable further Federal income by cutting loopholes, but I am not a tax expert, and therefore I am not qualified to go into that at any length.

Mr. BURKE. Are you for closing the tax loopholes on multinational corporations who enjoy a tax break that I am trying to get at under the Burke-Hartke bill? Are you in favor of that bill?

Mr. DOERR. I haven't looked at it.

Mr. BURKE. Are you in favor of that provision of that bill?

Mr. DOERR. I think the committee has the necessary expertise.

Mr. BURKE. You started discussing loopholes. This loophole is $3 billion a year that American investors get by investing overseas and building plants over there and exporting jobs, and sometimes they pay very little or no taxes. Are you for closing that loophole?

Mr. DOERR. I will certainly favor your bill, sir.

Mr. BURKE. Thank you very much.

Mrs. GRIFFITHS. I would like to point out to you that if this committee does what you have suggested, and closes some of the loopholes, you are going to discover that the loopholes which would bring in the most money also affect the greatest number of people, and they all are going to object. You would get a majority of Americans opposing that closing without any question.

We are going to have to act without a consensus view on which loopholes to close.

I really just do not understand the unreality of the courts' suggestions and some of the suggestions that are being made to this committee. It seems to me that the time has come to look at this from a practical standpoint. I don't see much practicality in some of these suggestions. Thank you.

Mr. ULLMAN. Are there any further questions?

Mr. CAREY. Mr. Chairman.

Mr. ULLMAN. Mr. Carey.

Mr. CAREY. I think you have done us a service by calling the attention of the committee to how politically perilous it would be to pass such a program as this because it is so unpopular by the figures you have given us. It is unpopular nationally, it is unpopular in key States.

Perhaps if the leading candidates for the Presidency knew this, it might make a difference in their positions. As you have said, the President openly advocates tax credits now. Senator McGovern on the record has endorsed the Ribicoff bill on the other side, which is similar to this bill.

So here we have the Democratic candidate in trouble because he is advocating an unpopular issue, according to your figures and statistics here, and the incumbent President is also advocating it; it will defeat him. I think you could look forward to the fact that the only other candidate in the field is Congressman Schmitz, running on the Independent Party ticket, and we might have a Catholic in the White House, because Mr. Schmitz is a Catholic.

I am glad you have let the Presidential candidates know what danger they are in, in advocating this issue.

Mr. DOERR. I think it would be wise if both candidates endorsed the position that John Kennedy held when he said: "I believe in an America where the separation of church and state is absolute—where no church or church school is granted any public funds or political preference." This is what the Supreme Court warned about last year in the *Lemon* case—the divisive potential of introducing religion into this arena.

Mr. CAREY. Are you aware that the first desegregation of schools that occurred in our country occurred in Louisiana in the nonpublic schools, where the Catholic schools acted before the public schools in desegregating?

Mr. DOERR. That is true in many Southern States, but that was not carried through to today. There were black Catholics who had filed suits in court in Louisiana in the last year, charging that the parochial schools are continuing to operate in a segregated manner.

Mr. CAREY. But they led the fight to desegregate; did they not?

Mr. DOERR. Yes.

Mr. CAREY. Also aren't you worried that since the conduct of education is known to be the leading drain, actually the biggest user of church funds, the one that requires them to commit the greatest available church funds, and it costs money to all the churches, that if we relieve the monolithic Roman Catholic Church of this cost of educating children, it will still have the same money, the same tax exemption, and have vastly additional resources, vastly greater resources, to carry on its work of evangelical and Pentecostal effort and become a much more powerful influence in our country? Are you worried about that?

Mr. Doerr. No. I accept the view of the National Association of Catholic Laity, which has criticized the financial priorities within their church in that an excessive amount of money seems to be devoted to the religious training of 10 percent of the church's membership while a very tiny amount of money is left for the two-thirds of Catholic children who attend public schools and for adults. Many liberal Catholics are calling attention to the fact that there is an imbalance in the church's spending on religious education and that it might do well to get out of the business of trying to duplicate public schools and spend more of their resources on the church's more central mission.

Mr. Carey. That is very simple. All they need to do is take a referendum among Catholics to see if they want to do it.

Mr. Doerr. That is not a bad idea.

Mr. Carey. You said you went to a parochial school. What school?

Mr. Doerr. Roman Catholic schools.

Mr. Carey. It does not seem to have done much to damage your concept of liberty and understanding of our American system. You are the best argument that I know for the fact that those schools do turn out intellectually superior people.

Mr. Doerr. Thank you. I do think my parochial education deprived me of contact with black students, it deprived me of contact with Jewish and Protestant students. It took me years to get over the lacks in my education—my religiously segregated Catholic education.

Mr. Carey. It is too bad you did not go to New York City as I did. We had all those elements in our school, and we did not have the differences of that kind.

You endorsed something which I think is very significant according to the Kraushaar study. You state that the nonpublic schools enroll only one-fourth as many improverished students as public schools. You said 4 percent against 16 percent. I think it is a pretty healthy and vigorous condition that, with no public funds available to them, somehow these schools, which are costly and are supported by parents' contributions only, manage to educate one in four children who have no money to give to those schools.

Mr. Doerr. One in 20.

Mr. Carey. Well, that is all right, but they get no help in doing so. So those children are a burden on the schools, and the schools manage to do it. The only reason they don't educate more of them is that they don't have any more money. If you want to improve on the admission of low-income students to those schools, isn't the tax remission a good way to do it?

Mr. Doerr. I don't think there is a financial problem in the schools. You are probably familiar with the study by the New York Planning Commission on the nonpublic schools in New York City, which concludes: "Finances are not a primary reason for the decline in Catholic school enrollment."

Mr. Carey. I would not cite the New York City Planning Commission as an authority on education. It has not been in the business very long. It is not doing a very good job, either, in settling the housing problems in New York City. Let us stay away from that one.

Mr. Ullman. Mr. Collier will inquire.

Mr. Collier. Mr. Doerr, you alluded to a position statement of the late President Kennedy in connection with this proposal, and his opposition to tax preference. The organization you represent, the Unitarian Universalist Association, is oriented to, or affiliated with, the Unitarian Church?

Mr. Doerr. It is the Unitarian Church.

Mr. Collier. Is your association tax exempt?

Mr. Doerr. Yes.

Mr. Collier. There is one other thing that I think you would have to concede is sort of a gross simplification, and that is your alluding to the trouble in Northern Ireland as today being attributable to the school system there. Do you really think that the problem there emanates from the fact that there are two school systems in Northern Ireland? Is it not the fact that the basic issues involved in the tragic trouble there today are almost totally unrelated to the school system there?

Mr. Doerr. Not at all. The genesis of the Irish problem is 800 years old. It is not the fault of Irishmen but the fault of Englishmen, Protestants. When Northern Ireland became a separate province, in 1921, the British Government went along with the policy of subsidizing religiously segregated schools. There were many problems in Northern Ireland. If the children had been going to a common school system, however, it is doubtful they would be at each other's throats today.

This has been stated by former Ulster Premier O'Neil, it has been stated by Bernadette Devlin, who said rather than election to Parliament, she should have stayed in Ulster to end religious segregation in education.

Mr. Collier. I could not agree with you more.

Mr. Doerr. I believe that the example of some of the communities in Northern Ireland, such as Ligoniel, in Belfast, are illustrative of this. Ligoniel has an integrated public school system, Catholics and Protestants, and has had for several generations. Those people are not at each other's throats. It is in the areas of Northern Ireland where they have gone to segregated schools where you have the worst bitterness and worst trouble.

Mr. Collier. I think you certainly are entitled to an opinionated conclusion that there is such a small factor in the overall problem, recognizing the historic situation that developed there and the fact that there is British control to the extent there is.

Be that as it may, I still insist that that is a gross oversimplification of the situation.

Let me just make one other comment, if I may. This division that you talk about, in terms of religious or sectarian schools within a community, really does not hold true in the communities that I have been privileged to represent now for 16 years, and in communities in which I was privileged to serve in one community role or another in the years prior to that.

Taking a middle-income community such as Berwyn, Ill.—which is a normal community with a pretty good cross section of people, not affluent—there are three parochial schools and nine public schools.

Approximately one-third of the school population has for years been going to three parochial schools.

They manage somehow, through other social contacts, to mix when they get to a high school level. There is no barrier between the youngster who has graduated from a parochial grade school and one from a public school.

I think a lot of this is a kind of red herring in discussion of this issue. We can talk about the constitutional question. You and I won't settle it, because there are those far more expert in constitutional law who will have to make that decision. But I think this idea of suggesting that parochial or private schools tend to rip people apart, to segment them, is not true in the long history of my own experience in communities which have parochial schools, whether Lutheran, Catholic, Dutch Reform, or whatever they are.

I think to suggest that this is going to divide people is not really a valid argument, because it is not borne out either by experience or historical fact. Thank you, Mr. Chairman.

Mr. DOERR. Could I comment on that?

The CHAIRMAN. Oh, yes.

Mr. DOERR. This is not a simple situation. It varies from community to community. When a school is nearly a hundred percent homogeneous by religion, it does tend to limit associations. If it is desirable for us to support existing denominational schools, would it not also be desirable to subsidize Methodist schools, Baptist schools, Presbyterian schools, Anglican schools, Muslim schools, Orthodox Jewish schools, Conservative Jewish schools, Reform Jewish schools? Would it not be desirable then to have a separate school system for each of them? What would this do to our tax rates and what would this do to keep people together?

Mr. COLLIER. I don't think it is necessarily desirous. You were the one who referred, in responding to one of my colleagues or perhaps in your full statement, to Congressman Waggonner's statement yesterday on right of choice. So we are not suggesting that you require or encourage everyone to go to a school of his particular religious belief, but merely saying you shall have the right of choice, and that the parents of those who choose this type of education shall be assisted through the means of a tax credit.

I would be inclined to feel that the Supreme Court would rule that this does not violate the first amendment of the Constitution. I quite agree with Mr. Waggonner that there should be the right to choice and that right of choice can be permitted to people without forcing a total elimination of the public schools which you and I know as a practical matter will never occur.

Mr. DOERR. The people in Holland thought this would never occur 50 years ago, but it did. Their public school system was destroyed utterly by the commencement of Federal aid to nonpublic schools. This resulted in a complete fragmenting of Dutch society. They are a much more simple society than we are and a smaller one, so they have not been at each other's throats.

Following that example here would be sure to lead to trouble economically and socially.

Mr. COLLIER. As long as the political pressures are such that the public school system will receive the bulk of Federal aid, and properly so, I assure you that I am not concerned that parochial and private schools ever will replace the public school system, and I seriously doubt whether you really believe that.

Mr. DOERR. If we grant a $200 credit—is $200 the right limit? Should a better limit be $150 or $450 or $950? Where will this process stop once we begin the process of supporting nonpublic schools? Where do we draw the line?

Mr. COLLIER. I think as long as the Federal Government has involved itself so deeply in so many areas of assistance to States and local communities, in areas where 25 or 30 years ago it was presumed to be a local responsibility and a State responsibility, that we now have established a precedent where the elected representatives will have to make this determination reflecting, I presume, the will of the people in most instances.

Under our system, if at any time the contribution of the Federal Government in any area exceeds what the people in a given district feel it should, the representative who so votes has to face the judgment of the people every 2 years. So therein you have the same safeguard as you have in every other area where we are spending Federal funds.

Mr. DOERR. But I believe we would open a can of worms. We would have in every State legislature and congressional hearing every year, representatives from every group coming before committees asking for increased aid, representatives from other religious and other people coming to argue against this. This will be pitting religion against religion from now on.

Mr. COLLIER. I doubt that, as a political and practical matter. I don't believe that one denominational group would come in and say it is entitled to more money than another denominational group.

I think whatever would be established in this area would not give one group any special tax preference over another group. It would be virtually ludicrous to suggest this would happen.

Mr. DOERR. But the witnesses who were here yesterday testified they wanted a tax preference as over against the 90 percent of American families who send their children to public schools.

Mr. COLLIER. I understood you to say that you probably would have people of a school oriented to the Jewish faith seeking greater preference than the Catholic group, for example.

Mr. DOERR. No; I did not say that. Yesterday you heard from a Lutheran spokesman, a Christian Reformed spokesman, an Orthodox Jewish spokesman, a Catholic spokesman. Within each of those groups are divisions.

I believe there will be other people in the denominations represented in these hearings who will come and say we certainly don't agree with the approach taken by the people who were here yesterday. You will be pitting one tradition against another, one group of traditions against another group of traditions.

Mr. COLLIER. People can disagree philosophically without dividing. I have had letters from people on social security who felt that the 20-percent increase which the Congress passed this year would not do anything without the other aspect of it. This came from people who were social security beneficiaries. You are always going to have people within groups who will disagree.

I don't think they will divide because of it. That is the American way, to disagree. Disagreement, incidentally, within political parties these days——

Mr. Doerr. I think Justice Burger was wise last year in warning in the *Lemon* case that bringing this sort of legislation up means introducing sectarianism and religion into politics. From your own State I know of instances were the proaid groups and antiaid groups all go to work to elect people in the primaries or defeat someone. This has been common in Illinois, in Michigan, in New York, in other States. It throws sectarianism into politics and I am certain it makes aspirants to political office extremely nervous.

Mr. Collier. I think it becomes a political issue, but I think there are other issues by which the broad judgment of the average voter prevails.

Mr. Doerr. In swing districts where you have a 2- or 3-percent margin, a cohesive small pressure group can swing an election on a single issue. That has happened in many States. It is the sort of divisiveness in politics that I think we can do without.

Mr. Collier. Thank you, Mr. Chairman.

The Chairman. Is there anything further?

Mr. Brotzman will inquire.

Mr. Botzman. Thank you, Mr. Chairman. I have just one question. I think you will agree that the great preponderance of the testimony has certainly indicated that the major problem of nonpublic schools is an economic one and caused by a lack of finances and perhaps in those cases lack of tuition. Yet in your paragraph 4—and I was just reading it—you state a conclusion in the first sentence that the tax credit will not really arrest parochial enrollment decline.

Now I am not familiar with all the studies that you cite as authority for that particular proposition, but do they really indicate that?

Mr. Doerr. Yes. Governor Rockefeller appointed a commission to study the matter of school finances, the Fleischmann commission. This commission reported earlier this year. The portions on nonpublic schools were done by Louis Gary, a young Catholic educator who had worked for Cardinal Spellman. He indicated at any politically realistic level, say $200 per year per student, for example, would not cause Catholic schools in New York City to quit declining. They are going to decline each year. By 1980 they will be approximately 50 percent the size they were in 1970.

The other nonpublic schools according to the New York Fleischmann report will remain the same, rather stable. This business——

Mr. Brotzman. To what do they assign the closings? I really was persuaded that it was basically a financial and economic problem or a combination of the two. What reasons do they assign to the parochial enrollment decline?

Mr. Doerr. This is from the Fleischmann report, I believe. President Nixon's Commission on School Finance had two major studies done by Notre Dame University and Boston College. They both came out and said that finances are not the primary reason for the closings.

The Boston College report, which was written by Prof. Donald Erickson of Chicago, with whom I have butted heads a number of times because he and I are in total disagreement on what should be done about aid to parochial schools. Erickson says, "So far as we are aware, not one of the recent analyses of relationships between enrollment and tuition levels has produced evidence that parents are leaving nonpublic schools primarily because of increasing costs."

Erickson added that "One must be naive or uninformed or dishonest to depict the current enrollment decline in parochial schools as fundamentally a consequence of cost increases."

We know that the exact size of a parochial system is not as relevant as the percentage of children of a particular faith that attend parochial schools. Now, among the groups having the highest percentage of children in parochial schools we find the Seventh-day Adventists and the Wisconsin Synod Lutherans. Both of these bodies have a larger percentage of their children in parochial schools than any other denomination. These two bodies don't want Government aid in any form. They have testified before legislative committees against such aid. Their schools are more costly to operate than all the other parochial schools because they generally tend to be small. They find the resources within their communities to pay for the schools and they do so gladly.

They run first-rate operations at great sacrifice. If they can do it, certainly larger churches which have greater concentrations of children can do the same. Most of the writing and reports on this subject show that what is going on is that the schools that are declining are basically the Catholic schools, not the Jewish schools or private schools, and the reasons are several.

You have people moving to the suburbs who find the public schools are just fine. Why set up a parochial school? Parochial school aid was defeated for 2 years in a row in the Wisconsin Legislature by catholic legislators who got up and said, "Look, we are parents. We used to like parochial schools. We don't think they are relevant any more. We urge you not to pass the legislation."

A tax credit bill similar to the one you are considering was voted down in the Wisconsin Legislature this year largely by Catholic and Lutheran legislators who feel that parochial schools are no longer relevant. We have liberal Catholics and liberal Lutherans who feel that parochial schools might have been nice 50 years ago, but today they are of no benefit. We have conservative Catholics who are upset by theological innovations and changes in Catholic education; they are taking their kids out of Catholic schools and putting them in public schools and giving them religious training at home. This is occurring to a large extent in the parish of Bishop William McManus, who was on President Nixon's Commission on School Financing.

I have talked to parishioners in his church who have taken children out of his school because they don't like the way religion is being taught there. The younger Catholic parents in the suburbs seem to be feeling, "Let us get with it, let us join our neighbors in the public schools and we don't need the same kind of schooling that we had as kids or that our grandparents had."

This is the change in attitude, not the increase in cost that is causing the problem.

Mr. BROTZMAN. You do think that finance is part of the problem?

Mr. DOERR. A very small part.

Mr. BROTZMAN. You think it is a small part?

Mr. DOERR. Yes.

Mr. BROTZMAN. You used the words "will not arrest." You think it is actually a small part of the problem?

Mr. DOERR. A very minor part. A given parent who is on the fence and trying to decide whether he will send his child to parochial or public school may get to thinking about a new car or new TV. The financial thing may weigh slightly in the balance or he may use it as an excuse. Basically it is not a financial problem because Wisconsin Lutherans and Seventh-day Adventists are making it. They are operating parochial schools without asking for Government assistance and on the average they earn less than the other bodies that were testifying yesterday and their schools are serving sperser populations and are smaller, therefore less efficient and more costly to operate. They are managing.

People who really want parochial education will pay for it and money will be no object. I think Bishop McManus himself on the President's Commission said in the last year or so that the basic problem in the Catholic schools is a crisis of confidence, not a money problem.

Mr. BROTZMAN. Thank you very much.

Mr. CAREY. Mr. Chairman?

For the record will you specify exactly when and where Bishop McManus made that statement. Is it a crisis of confidence in the public schools? You have attributed a great many things to Bishop McManus. You have spoken about his talk to the parishioners. You are not a member of the same faith as Bishop McManus?

Mr. DOERR. We parted company.

Mr. CAREY. You indicated earlier you went to catholic parochial schools?

Mr. DOERR. Yes, sir.

Mr. CAREY. I will not ask you what your faith is now, but you are not a member of Bishop McManus' faith or congregation at the present time?

Mr. DOERR. At the present time that is correct.

Mr. CAREY. Is there a chance you might join?

Mr. DOERR. I am rather ecumenical. I am one of the few Unitarians who is a member of the National Association of Catholic Laity. I will be happy to provide you with a reference on Bishop McManus' statement.

Mr. CAREY. I want you to be sure you understand we have before the committee the complete President's report, which strongly recommends—Bishop McManus being a member of that panel—this form of aid. Since you said it is a matter of custom or parental taste, it is quite true that the cultural diversity and the patterns of our growing population will determine the faith of our school system with or without this aid.

Parents, as you say, will choose whether they want a color TV set or new car or pay tuition. Given that fact and the fact that you point out that the Fleischmann report indicates there will be a decline in Catholic parochial schools in New York City with or without tax credits, how then do you raise this gargantuan problem, this bugaboo, this Frankenstein, that if we get Federal aid, these schools will grow and fracture the public school system and we will have denominational breakdowns in the country? You say they are going to disappear anyway. Why do you worry that this bill will arrest that decline? As you said, there is not a financial problem.

Mr. DOERR. They will continue to decline and level off at about 50 percent of their present enrollment if the aid remains nonexistent or up to a level of $200. But if this committee provides aid to the tune of $200, then this is a green light for State legislatures to provide similar credits, State income taxes or local real estate taxes, as has been recommended in the Florida Legislature.

Mr. Carey. I guess you weren't here for the revenue sharing hearings. The State legislatures don't have any money for anything. They are not going to give money to anybody. They are broke.

Mr. Doerr. The Louisiana Legislature just passed a tax credit measure which is going to court. I think the granting of $200 per child would raise hope in the minds of operators of nonpublic schools that they can get further Federal and State aid and the lobbying process to secure this aid and to raise it to perhaps parity with the public schools will begin.

Mr. Carey. I am sorry to hear you are against hope. If we go along enough, we may find you are against faith and charity as well.

Mr. Burke. You made reference to Boston College and Notre Dame reports. Was that report made as a result of a study?

Mr. Doerr. These were reports done for the President's Commission on School Financing. They were submitted to President Nixon's Commission and supposedly were considered before the Commission handed down its recommendations. My personal view is that they did not read them carefully.

Mr. Burke. Who financed them?

Mr. Doerr. Apparently the administration.

Mr. Burke. Thank you.

The Chairman. Are there any further questions? If not, we thank you again, Mr. Doerr, for coming to the committee.

Mr. Doerr. Thank you, Mr. Chairman.

The Chairman. Mr. Albert J. Millus.

Mr. Millus, I have looked through your statement. Could you tell me ahead of time how long you think you will be in delivering it?

STATEMENT OF ALBERT J. MILLUS, PRESIDENT, DIOCESAN FEDERATION OF HOME SCHOOL ASSOCIATIONS, BROOKLYN, N.Y.

Mr. Millus. Not more than 15 minutes.

The Chairman. If you will identify yourself for the record, we will be glad to recognize you.

Mr. Millus. Thank you very much, Congressman Mills.

My name is Albert J. Millus. I am president of the Diocesan Federation of Home School Associations of the Diocese of Brooklyn, N.Y. The federation is composed of two delegates from each of the 201 Catholic elementary schools in Kings and Queens County which together comprise the Catholic Diocese of Brooklyn. These schools serve the educational needs of more than 150,000 pupils.

In addition the Brooklyn diocese conducts 37 high schools serving the needs of 35,000 students.

The fiscal crisis in education brings me here from New York City today to add my name to that of countless others who are cognizant of this crisis. But it is not a fiscal crisis facing parochial schools alone. It affects the public schools as well for the collapse of the parochial school system will inevitably lead to a severe crisis in the public school system.

The financial burden which would be inflicted on the public schools already feeling the effects of limited State education budgets would be severe. In New York City, for example, one out of every four school children attends a nonpublic school.

The financial plight of the parochial schools is recognized on both a Federal and State level. President Richard Nixon, in an address on August 17, 1971, before the Supreme Council of the Knights of Columbus, expressed the hope that the Federal Government would make available some form of financial assistance to parochial schools.

Gov. Nelson A. Rockefeller of New York State, in his annual message to the State legislature on January 18 of this year, declared:

> As far as private schools are concerned, the Federal courts have just struck down last year's legislation to provide aid for secular teaching in the nonpublic schools. I am confident, however, that we can find a constitutionally acceptable way to provide the badly needed assistance. Without it the nonpublic school system could collapse, adding up to 700,000 students to the public school system.

The financial crisis in the schools of the diocese of Brooklyn is real and it is already upon us. The diocese of Brooklyn has the third largest private school system in the country with total enrollment in primary and secondary schools of 185,000 students. The secondary schools number 37.

Tuition is charged with a median of $150. Of the 201 elementary schools in the Brooklyn diocese, 23 are in poverty areas and are already subsidized by 1.5 million in diocesan funds. In addition more than one-half of all parish income in the diocese goes to support schools and parish income is declining. Tuition in the diocesan high schools has risen from $300 to $700 per year.

The bishop of the Brooklyn diocese, Francis J. Mugavero, in commenting on the effect of the 33 million mandated service bill being declared unconstitutional stated:

> It will be most difficult for the schools to service as we know them without substantial public aid . . . There is a limit to the sacrifices we can make. The schools could go under within a year or two in the absence of public subsidy.

I said the crisis is already upon us because three Catholic high schools in the diocese have announced the closing of their doors in the last few years, viz.: Brooklyn Prep, St. Johns Prep, and Most Holy Trinity. More than 40 percent of the student body of Holy Trinity located in the Williamsburg section of Brooklyn, a low-income area, live in poverty-designated sections.

While I speak with some degree of personal knowledge only about our situation in Brooklyn, having been a representative to or officer of the Diocesan Federation of Home-School Associations since its formation in 1966, the same financial crisis affects the rest of New York City, represented by the New York Archdiocese under the leadership of Terence Cardinal Cooke. Declining income and mounting costs result in greater and great deficits.

The educational services rendered by the Catholic parish schools educate 300,000 students in New York City alone. The financial standing of their parents is significant. A recent survey showed that 87 percent of the parents of parochial school children in New York City earn less than $10,000 a year and one-third of these earn less than $5,000.

A family earning $10,000 a year with three children in high school would be spending $2,100 a year or 20 percent of gross income for tuition. Even a family with three children in elementary schools and a child in high school and making $10,000 a year would be spending 10 percent of gross income for tuition.

Obviously the one-third of the 87 percent of these families who earn less than $5,000 could not possibly afford to pay such sums from the gross salary for tuition. Nothing indicates that these figures differ in other areas of the Nation.

These tuition payments are in addition to taxes they pay for public schools which they do not use in the exercise of their constitutional prerogatives.

In the borough of the Bronx in New York City 30 percent of the students in Catholic schools are black or Spanish-speaking and, contrary to the statistics we heard this morning, 60 percent of the students in Manhattan are black or Spanish-speaking.

The financial crisis of the Catholic schools exists on a national level as well. It was reported in the Sunday edition of the New York Times on June 18, 1972, that a comprehensive study of the five county Philadelphia Archdiocese school system, the second largest Roman Catholic system in the country, has found that mounting deficits and declining enrollment pose a grave threat of collapse.

The same situation faces all of the Catholic schools of the Nation. The National Catholic Educational Association in a report issued as far back as December 1970, reported an increase of $200 million to run the almost 12,000 elementary and secondary Catholic schools in the Nation. Since 1969 the number of schools decreased by 7 percent and enrollment fell 10 percent.

The U.S. Census Bureau, in a publication entitled "School Enrollment in the United States—1971," showed that the decline in attendance in Catholic elementary and secondary schools was continuing. It reported a precipitant drop of 23 percent since 1965. Contrary to what was said this morning, much of this attendance drop, according to Dr. George Elford, research director of the National Catholic Association, is due to the ever-increasing tuition costs of these schools.

Since only the resources of the State or Federal Government could save the nonpublic schools, we in the Federation of Home-School Associations have concentrated our efforts for financial assistance on the passage of such bills in the State legislature. I am happy to report we have met with success on every level except the judicial.

First, we have had the overwhelming support of our membership in our fight for the passage of a State financial aid bill. In fact, in April of this year the Federation sponsored a rally participated in by more than 30,000 parents and students to demonstrate our support of Governor Rockefeller's announced desire to save the nonpublic schools.

Second, a fair State-aid program for nonpublic schools valued in excess of $30 million was passed this year overwhelmingly in both the New York State Senate and New York State Assembly. The bill passed the assembly by 111 to 32 and the Senate by 47 to 10.

Third, the Governor of New York State, Nelson Rockefeller, signed the bill into law in keeping with his promise in his legislative message at the opening of the legislative session.

I say "except on the judicial level" because the Federal district courts have declared the New York State mandated services law to be unconstitutional, as well as the maintenance provision in the three-pronged bill passed this year by the State legislature.

Likewise, it appears that there is strong bipartisan support in favor of some kind of Federal financial-aid bill for nonpublic schools. President Nixon has expressed his approval of Federal aid to nonpublic schools.

I do not believe that the major problem before this committee is whether, in fact, there is a need for Federal aid. The vast amount of publicity given to the financial crisis of the parochial schools should establish the validity of that need.

There are several questions that must be faced by all those concerned with this problem. The first question pertains to the justification for such financial aid and the second with the constitutionality of such aid in view of the first amendment's establishment of religion clause.

Mere need alone is not justification for Federal financial aid. We must ask ourselves what role do our nonpublic schools play in our socio-economic society for the common good of all. In short, are our Catholic schools, which comprise the overwhelming majority of nonpublic religious-oriented schools, fulfilling their role of aiding the common good and general welfare of this country?

As to the worth of our Catholic schools to the common good, a few salient facts should be considered. One of the most thorough surveys on the effects of a Catholic education has been made by the National Opinion Research Center of the University of Chicago. Part of this work has been published in "The Education of Catholic Americans" by two noted social scientists, Andrew M. Greeley and Peter H. Rossi (Aldine Publishing Co., Chicago, 1966).

This report by Greeley and Rossi was characterized by the Harvard Educational Review (summer 1967) as "by far the most useful study that has been attempted in the area of Catholic education."

The Harvard Review asserted as follows:

> . . . The tools of survey research are used in this study with great skill and sophistication. Despite the fact that the researchers seem determined to avoid the charge that they "claim too much" either for their data or for the Catholic school system, the conclusion emerges that the comprehensive and cumulative effect of Catholic education is to produce not only a religious adult but a more tolerant and socially aware citizen.

For years it has been alleged that the Catholic schools do positive harm—that they are divisive because they separate Catholic children from public schools during school hours.

On the question: Are Catholic schools really divisive?" Greeley and Rossi found in the negative, stating:

> Catholic school Catholics are just as likely to be interested in community affairs and to have non-Catholic visitors, friends, neighbors and co-workers as are public school Catholics. In fact, Catholic school Catholics are actually more tolerant with regard to civil liberties.

These findings were significant since the myth of divisiveness has been around a long time. For instance, Gerhard Lenski in "The Religious Factor" (Doubleday, 1961) seemed to expect that:

> Catholics who received all or most of their education in Catholic schools, and therefore had less contact with non-Catholics, would have more unfavorable im-

ages of Protestants and Jews than those with a public education. Yet Lenski admitted that "the data did not support that very plausible line of reasoning—at least as it applied to those who had received all or most of their education in Catholic schools.

What is also significant in examining into the justification of nonpublic schools is the fact that 150 years of coexistence has passed between public and nonpublic schools. As a result, the nonpublic schools are no longer an insignificant offshoot of the public educational system in the United States for those parents who prefer a religious-oriented education for their children.

They are now partners in one of the most serious endeavors facing any nation. The extent of the partnership in education between the public and nonpublic schools is apparent when we consider that 5.5 million children are in nonpublic schools in the United States; 4.5 million of these are in Catholic schools in more than 12,06[illegible] institutions.

President Nixon said 2 years ago:

> The nonpublic elementary and secondary schools in the United States have long been an integral part of the nation's educational establishment. They supplement, in an important way, the main task of our public school system. They provide a diversity which our educational system would otherwise lack. They give a spur of competition to the public schools through which educational innovations come; both systems benefit and progress results.

Public and nonpublic schools [illegible] now full partners in the single most important goal of any nation, [illegible] the education of the youth of the Nation, its greatest resource.

While the nonpublic religious-oriented schools are now full-fledged partners, their very existence was challenged some 47 years ago in the case of *Pierce* v. *Society of Sisters*, in which the U.S. Supreme Court held that a State statute requiring that all children be educated in public schools violated the due process clause of the 14th amendment of the Federal Constitution.

But how empty is the right of parents who, mandated by State law to educate their children, do not have the financial means to fulfill this mandate within the framework of their religious preference.

For 150 years Catholics and those of other religious faiths have been able to bear the burden of their selection. But inflationary forces have made it difficult, if not impossible, to continue to bear this burden. In Catholic-run schools one of the chief causes of increased expenses is the tremendous drop in religious teachers who provide dedicated services for nominal wages.

That same nation in which the right of selection of a religious-oriented education became the law of the land, now because of inflationary forces and other causes not under the control of the individual, should make it possible to exercise this constitutional right by financial support not of the religious institution or the teaching of religious subjects, but of the secular subjects taught therein.

By so doing the Government is not making a law respecting an establishment of religion. Rather, it is rescuing a full-fledged partner who is as totally committed as the Government to the education of its youth, thereby preserving an institution that promotes the common good and preserving to its citizens the free choice of a secular or religious-oriented education.

But there is even a more basic right that is involved. The very same sentence of the first amendment to the Constitution stating that Congress shall make no law respecting the establishment of religion also "guarantees the free exercise thereof." Parents who send their children to parochial schools exercise that right. Failure to furnish financial aid for secular subjects in religious-oriented schools will effectively take away that right.

Today this Nation stands on the brink of the establishment, not of any particular religion, but of a monopolistic State-controlled educational system. It is that pluralism of race, the melting pot, which built this great Nation. Is that same Government going to jeopardize the continuance of pluralism of education by failing to furnish financial aid for the secular education of children in religious-oriented institutions?

The New York Times, which has consistently held to the view that fiscal considerations must not be permitted to breach the wall of separation between church and state, in an editorial on May 5, 1972, commenting on the parochial school financial aid bill passed by the New York State Senate, stated as follows:

> The principle of separation remains an important protection for church as well as state. But the continued existence of the greatest possible variety of alternate nonpublic schools is essential to prevent public education from becoming an inescapable state-imposed monopoly. For this reason it is in the public interest to make available to nonpublic schools limited assistance which does not violate the principle of church-state separation because it does not make religiously controlled schools dependent on tax support for their operations. We think that there was basic error in a recent Federal ruling that declared unconstitutional a New York law reimbursing the parochial schools for such state-mandated services as the administering of examinations, keeping of attendance records and other costs for administration required by the state education authorities.
>
> It may be argued that such allocations could be inflated to serve as a cover for general operating support. Such abuses, however, can be avoided by realistic professional cost estimates. The crux of the matter is that nonpublic schools should not particularly at times of serious fiscal pressure, be required to bear the burden of any expenses imposed by the state. The New York ruling is expeded to be appealed to the United States Supreme Court, which will thus have the opportunity to deal realistically with this most recent facet of the problem of charting a sensible policy toward the nonpublic schools without violating the principle of church-state separation. This is not an issue to be abandoned to unprincipled forways by the Legislature.

On March 26, 1972, Terence Cardinal Cooke of the Archdiocese of New York, appeared on a major television network to talk about Catholic education and the financial crisis it faced. I appended a copy of that statement to copies I left with this committee and I recommend it for your reading.

> Within the framework of the constitutional principle of the separation of church and state we are asking only that tax money collected to educate all children be used to educate all children. American Catholics, with all religious people in this country, believe firmly in the separation of church and state. The fact that a school adds to its full curriculum of secular studies, a course of study in religious knowledge, does not violate this principle and must not bar its students from a fair share of the monies designated by law for the education of all. The government that collects taxes can either assist the student directly or assist the parent in educating his child. There are many precedents for this and Chief Justice Burger's opinion of June 1971 clearly indicated that neutral, nonideological aid to the students, and aid to parents were not forbidden. They are quite constitutional.

Federal financial aid to nonpublic schools is possible within the framework of the constitutional principle of church and state.

While the decisions of the Supreme Court in Pennsylvania's *Lemon* case and Rhode Island's *Di Censo* case striking down as unconstitutional the use of government funds to pay parochial schools for providing secular educational services to their students in the former and payments to supplement the salaries of teachers of secular subjects in the latter case were discouraging; the decision in the case of *Tilton Richardson* and other decisions over the past 17 years offer some hope that the problem can be resolved in favor of Federal aid.

In the *Lemon* and *Di Censo* cases, Chief Justice Burger found that the basic wrong with the State programs was "the cumulative impact of the entire relationship arising under the statutes in each State involves excessive entanglements, between Government and religion." The "no excessive entanglement" standard was first mentioned in 1970 by the same Supreme Court in *Walz* v. *Tax Commission*.

On the very day of the decisions in the *Lemon* and *Di Censo* cases, June 28, 1971, the Supreme Court, in a 5-4 decision, upheld the constitutionality of the Federal Higher Education Facilities Act of 1963, in the *Tilton* v. *Richardson* case.

The *Tilton* case was a landmark decision for it marked the first time that the Supreme Court has upheld direct aid to church-related colleges. The very same court which found excessive entanglement in *Zemon* and *Di Censo* which provided for financial aid at the elementary and secondary school level, found no prohibitive entanglements at the college level. The court declared:

> The entanglement between church and state is also lessened here by the nonideological character of the aid that the Government provides. Our cases from Everson to Allen have permitted church-related schools to receive government aid in the form of secular, neutral, or nonideological services, facilities, or materials that are supplied to all students regardless of the affiliation of the school that they attend. In Lemon and Di Censo, however, the state programs subsidized teachers, either directly or indirectly. Since teachers are not necessarily religiously neutral, greater governmental surveillance would be required to guarantee that state salary aid would not in fact subsidize religious instruction. There we found the resulting entaglement excessive. Here, on the other hand, the Government provides facilities that are themselves religiously neutral. The risks of Government aid to religion and the corresponding need for surveillance are therefore reduced.
>
> Finally, Government entanglements with religion are reduced by the circumstance that, unlike the direct and continuing payments under the Pennsylvania program, and all the incidents of regulation and surveillance, the Government aid here is a one-time, single-purpose construction grant. There are no continuing financial relationships or dependencies, no annual audits, and no Government analysis of an institution's expenditures on secular as distingushed from religious activities. Inspection as to use is a minimal contact.
>
> No one of these factors standing alone is necessarily controlling; cumulatively all of them shape a narrow and limited relationship with Government * * * The relationship therefore has less potential for realizing the substantive evils against which the Religion Clauses were intended to protect.

The history of the decisions by the Supreme Court of the United States on aid to religious institutions indicate that the wall of separation between church and state is not insuperable.

After deciding the case of *Pierce* v. *Society of Sisters* (supra) in 1925, the Court, in 1930, sustained a State statute under which children attending both public and private schools were furnished by the State with textbooks free of charge (*Cochran* v. *Board of Education*).

Then, in 1947, came the famous *Everson* v. *Board of Education* case in which the Court upheld a State statute authorizing reimbursement to parents of money expended for transportation of children to parochial schools.

A year later in the case of *Board of Education v. Allen*, in 1948, the Court upheld New York State's school textbook law permitting the free loan of textbooks to parochial school children.

Finally, *Walz v. Tax Commission*, decided in 1970, sustained the constitutionality of a State's grant of an exemption from State property tax to religious organizations for properties used solely for religious worship.

While the *Lemon* and *Di Censo* cases present constitutional difficulties, where there is a will, there is a way.

For 60 years, ever since *Plessy v. Ferguson* was decided in 1894, and in about five cases thereafter over the next five decades, the Supreme Court of the United States held that separate was equal. Then came *Brown v. The Board of Education of Topeka, Kansas* in 1954, and the majority of the Court decided that separate was no equal, citing in support of this view in footnote 11 on page 692 of that case, as reported in volume 74 of the Supreme Court Reports, seven scholarly articles and texts including the work of Myrdal, "An American Dilemma."

As necessity is the mother of invention, a realization by the members of the Supreme Court of the overwhelming benefits to the State and Nation of the parochial school system, will hopefully enable them to look upon the next financial aid bill to come before them, not as a bill whose purpose and primary effect is the advancement or inhibition of religion, but rather one of a secular legislative purpose whose primary effect neither advances nor inhibits religion.

The proposed tax credit bill approaches the problem in the area where it is most acutely felt, the pocketbook of the parents. It is the parents whose constitutional rights are most affected. It is they who are charged morally and legally with the obligation of providing education for their children. It is they who must decide the form this education must take. It is they who are forced to compromise their consciencies if their pocketbooks force a decision upon them.

These parents have a right before God and before the Constitution of the United States to look to their Government for assistance when their financial situation forces an unacceptable choice upon them. They do not object to supporting by their taxes the education of all other children. They ask only that they be assisted through the relief afforded by the proposed bill in removing at least a part of the unjust burden under which they labor.

On behalf of the parents of 150,000 students represented by our, organization and the countless thousands of others similarly situated I earnestly urge the passage of the Federal tax credit bill.

Thank you.

The CHAIRMAN. We thank you, sir, for your very fine statement. Without objection the entire statement made by Cardinal Cooke on March 26th will be included in the record at this point.

(The statement referred to follows:)

CARDINAL COOKE ON CATHOLIC EDUCATION—NBC-TV—
MARCH 26, 1972

Good Afternoon: I welcome this opportunity to talk to you about Catholic education. This is a matter of major importance for every American Catholic parent and, I believe, for every American as well. I am concerned about the preservation of a great national asset which has contributed considerably to the American way of life for more than one hundred and fifty years. I speak of parish schools which are found in our cities, towns and villages from Maine to Hawaii.

There is no doubt that schools are a national asset. We are more and more concerned today with the preservation of our assets and resources—whether they are forests or rivers, or the air we breathe. Our indifference and neglect can lead to their irretrievable loss. This is true also of these schools which are dedicated to excellence in education and to providing a sound formation in citizenship for the youth of America.

Today one out of every four school children in New York City attends a non-public school. In New York State alone more than 700,000 youngsters are in these schools.

In New York because of our concern for the total education of our people, we have many other dynamic initiatives. Special education classes care for exceptional youngsters who have learning disabilities. Thousands of people of all races and creeds are being helped to assume their rightful places in our society through parish adult education programs. Our instructional television channels enhance our whole educational endeavor by bringing the best available instruction to students. Programs in Religious Education reach out to children in public and Catholic schools and also to Catholic adults.

However, the most obvious involvement of Catholic parents in education is the parish school. Let me tell you something of the dimension of the investment of the Catholic people in the work of formal education in the United States and in the New York area.

Five and a half million children are in non-public schools in the United States and four and a half million of these are in Catholic schools. These four and a half million youngsters are in over 12,000 schools which give complete quality education, meeting, in every way, the requirements of the compulsory education laws of the states.

Catholic schools in the metropolitan area, together with Hebrew Day Schools, the Lutheran and other religious schools, as well as other non-public schools are today educating one out of every four children in New York City. The Catholic parish schools in New York City alone educate over 300,000 students. They educate more children than any urban public school system, excepting New York City itself, Los Angeles and Chicago. Non-public schools in New York State educate more young people than do thirty states of the union.

As the President said two years ago: "The non-public elementary and secondary schools in the United States have long been an integral part of the nation's educational establishment. They supplement in an important way the main task of our public school system. They provide a diversity which our educational system would otherwise lack. They give a spur of competition to the public schools through which educational innovations come, both systems benefit, and progress results."

Many Jews, Protestants, Catholics and others have made great sacrifices to keep their children in schools of their choice. Far from disrupting the American way of life, these schools strengthen the very fiber of the country. Freedom of choice, educational diversity, moral and spiritual values are all made stronger by the existence of non-public schools.

We believe most sincerely that non-public schools are good for the young people and good for the nation. Individuals, families, local communities, the whole nation profits from the instruction of children and young adults in the importance of a religious outlook on life that fosters love, honesty and just dealings with their neighbors. Lutheran and Hebrew schools do this as we Catholics do, and many others as well.

Today the parents of non-public school children are asking for aid from government to keep their schools open. The parents who send their youngsters to these schools are determined to maintain in this country schools that offer this kind of education which they want for their children. But beyond that, many of us share a concern about the grave problem that would be caused if these more than five million youngsters were to be transferred suddenly to the public schools of the nation and thereby end the annual saving of $1,500,000,000 which is now invested voluntarily by parents in the education of their children. If this should occur, taxes will rise and all society will suffer.

It is also most important that all of us realize that these schools are not what someone might call "exclusive private schools." Catholic schools have been built and are supported in the main by poor and lower middle class people. A recent survey revealed that 87% of the parents of parochial school children in New York City earn less than $10,000 a year and ⅓ of these earn less than $5,000. Indeed one in ten of our parents lives below the national poverty level. These parish schools, therefore, are not upper middle class havens.

In the Bronx and Manhattan, Catholic schools never abandoned the innercity. . . . they remain today a singular asset serving the people of our minority communities. Immigrants and disadvantaged families have always been the special concern of parish schools. 60% of our students in Manhattan are Black or Spanish speaking; 30% in the Bronx.

I think you will be interested in how the Catholic people of the United States finance their schools. This first chart shows the average parish school budget; 21% of the amount needed to cover school expenses comes from parents as tuition; 14% is derived from all manner of special efforts—gifts, parties, bingo and the like; however, 65% of the cost comes from all the parishioners, that is to say, from the Sunday collections.

Catholic parishioners throughout our country are bearing a heavy burden to support their schools. In New York, some parishes gave 60% of their income to the schools; and all solvent parishes in New York now assist the poorer ones—last year they gave two and a half million dollars to the poorer parishes.

Government grants for text books, transportation, state-mandated services, certain health and remedial aids are most welcome and helpful to students and parents—but they do not solve the basic financial problem.

Let me demonstrate why the parents of our non-public schools need help. This next chart is a graph of income and expenses for Catholic parish schools in the Archdiocese of New York, but something similar is true for all schools.

From 1957 to this year school income followed this line.
The dedicated Sisters, Brothers and Priests, who represent half of our faculties and work for subsistence salaries, received only this slight rise;
Lay teachers received this rise in salaries;
And total expenses went this high—
But income remains way down here.

That is the problem. Public school administrators recognize the problem—they have it too. Even substantially endowed universities like New York University and Columbia are suffering similar problems.

Today many people in the nation—myself included—believe that a form of government return to tax-paying and tuition-paying parents is both just and urgent. It is urgent because of the fiscal crisis that those parents and every tax payer will face if non-public education disappears for all but the wealthy.

Within the framework of the constitutional principle of the separation of Church and state, we are asking only that tax money collected to educate all children be used to educate all children. American Catholics, with all religious people in this country, believe firmly in the separation of church and state. The fact that a school adds to its full curriculum of secular studies, a course of study in religious knowledge, does not violate this principle and must not bar its students from a fair share of the monies designated by law for the education of all. The government that collects taxes can either assist the student directly or assist the parent in educating his child. There are many precedents for this and Chief Justice Burger's opinion of June 1971 clearly indicated that neutral, nonideological aid to the students, and aid to parents, were not forbidden. They are quite constitutional.

Catholics, Protestants and Jews who seek this aid, want you to know that they do not wish to have their schools fully supported by government. They are willing to carry their heavy burden for the schools they value. They are asking only a fair sharing of educational benefits and a reasonable return of part of the taxes they pay. We think this position is just, that it is in accordance with the Constitution and that in the final analysis it will benefit rather than harm public education.

The right to the free exercise of religion is a right guaranteed in our Constitution. This right has been interpreted to mean that parents exercise that freedom when they provide for the full education of their children. But if this right is given and cannot be used, this right is given in vain.

As Americans, we believe that there should be unity without uniformity, and diversity without division. I am convinced that practical means can be found and will be found to assist the parents of non-public school children.

I hope that these thoughts and statistics that I have presented to you may help you to see why many of us believe that state or federal aid to students in non-public schools or to their tuition-paying parents is necessary, constitutional and good for the education of the children of America. Thank you for letting me share these concerns with all of you.

I am pleased to be here with Bert Shanas of the Daily News and Bernard Bard of the New York Post. They have great experience in educational matters and I welcome the opportunity to discuss this important subject with them.

The CHAIRMAN. Mr. Waggonner.

Mr. WAGGONNER. Thank you, Mr. Chairman.

Mr. Millus, on page 2 of your statement you cited some median figures for 201 elementary schools in the Brooklyn Diocese as showing a median tuition cost of $150 per person per year. Would you believe that for elementary schools, if the $200 tax credit law is enacted, the net effect would be to increase the cost of nonpublic education in this respect because these schools would increase tuition from the $150 median figure now to $200 because of the tax credit?

Mr. MILLUS. There is always that possibility Congressman, but the point is that there is a great desire on the part of the parent and those who run these schools to keep them going. This is not a commercial endeavor. This is a total dedication to an ideal.

For that very reason you have a built-in protection against mere increase in cost just to take advantage of Federal aid.

Mr. WAGGONNER. Would you tell me what that ideal is?

Mr. MILLUS. That ideal is everything they believe in as Catholics, everything they believe in religious-wise, everything they believe in in their country, and I believe that ideal is a noble good both for them and for their country.

Mr. WAGGONNER. That is not a very good answer if you believe in the separation of church and state, because you are now asking the Government to subsidize religious education because that is the ideal in your opinion of parochial education.

Mr. MILLUS. Congressman, we are only asking them to subsidize the teaching of secular subjects just as they are doing in the public schools. We are not asking them to subsidize the teaching of religious subjects, but only of secular subjects.

Mr. WAGGONNER. Can you tell me how you can separate the expenditure of these dollars for secular purposes from religious purposes?

Mr. MILLUS. Contrary to what the Supreme Court of the United States said, I believe, and I am a product of some 16 years of Catholic education, when a teacher is teaching math or physics or chemistry, he is teaching only math or physics or chemistry and not religion. I do not believe you have to have any supervision. I do not believe there is entanglement when you aid the support of secular subjects to see to it that he does not include religion.

I say to you, Congressman, that is strictly a myth to say that a math or chemistry or physics professor——

Mr. WAGGONNER. And I must say to you that you appear to be rather naive.

Mr. Millus. Sir, I said I base it only on my own experience, 16 years in the parochial system and 3 years in a private institution in Cambridge up at Harvard. So I believe I have somewhat of a balanced judgment on this matter and I never saw the interjection of religous subjects in a mathematics class whether at Fordham, St. Augustine's or St. Rose of Lima Grammar School.

Mr. Waggonner. Consider yourself fortunate. On page 3 of your statement you make the statement that these private schools could go under within a year or two in the absence of public subsidy. I find this to be somewhat in conflict with a position taken by Rabbi Sherer yesterday. Rabbi Sherer spoke for tax credits, but he specifically set forth that this was not in any way a subsidy. You, however, consider it to be a subsidy. Could you tell me wherein you think he is wrong?

Mr. Millus. Sir, once again I can speak only from my own experience. As president of the Federation of Home School Associations, vice president and representative over the 6 years, I have been intimately concerned with this problem. I have discussed this problem with Francis Mugavero, bishop of Brooklyn. I stated in my address that we are subsidizing the schools in our diocese to the extent of $1.5 million a year. So I say with the bishop this cannot go on longer with increased expenditures. This is a prohibitive expense for the diocese. That is the reason we have schools like Brooklyn Prep, St. John's, and Holy Trinity closing.

From my own experience we know we cannot sustain this deficit without aid. We have reached the limit of our financial ability to sustain the school system in the diocese of Brooklyn.

Mr. Waggonner. Are we talking about aid or are we talking about a subsidy? In your prepared statement you referred to it as a subsidy. In this explanation now you call it "aid." Do you consider it to be a subsidy?

Mr. Millus. Congressman, I think it would be a matter of semantics whether to say it is aid or a subsidy. It is an out right grant for the continuance of the nonpublic schools.

Mr. Waggonner. Then you will stand on your prepared statement?

Mr. Millus. Yes, sir. It certainly is an outright grant.

Mr. Waggonner. Which is a subsidy.

Mr. Millus. If you wish to label it that.

Mr. Waggonner. I don't wish to. You said it is a subsidy.

Mr. Millus. Whatever you label it, yes. I fail to see the distinction between subsidy and aid.

Mr. Waggonner. You referred to *Everson* v. *Board of Education*. If I remember *Everson* v. *Board of Education*, even the minority opinion said that it was unconstitutional for the Federal Government to aid a religion, any religion or all religions in any way. Is my recollection correct?

Mr. Millus. You are eminently correct, Congressman. I agree with you a hundred percent. The first amendment to the Constitution states that the Federal Government shall make no law respecting the establishment of a religion. It is my contention, Congressman, that passing a law which pays for the teaching of secular subjects in a nonpublic school is certainly by no stretch of the imagination making a law establishing a religion.

Mr. WAGGONNER. How do you square that statement with your explanation to me a moment ago of what the ideal of a nonpublic school was in your particular opinion? Do you remember what you said a moment ago about the ideal of the nonpublic school.

Mr. MILLUS. What I am saying is that the end product of the parochial school is a Catholic-educated individual who I say contributes to the common good of this country as any other citizen. I say it is a good that far outweighs any inconvenience that would result, as you say, in entanglements. Again, the purpose is to pay for the teaching of secular subjects.

Mr. WAGGONNER. You omitted religion there.

Mr. MILLUS. The funds from the parish will pay for that. All we are asking is to pay for the teaching of secular subjects.

Mr. WAGGONNER. You are now answering my question I asked you two or three questions back when I asked you how you would separate Federal funds from the normal source of parochial funds.

Mr. MILLUS. We will use the funds to pay for teachers who teach strictly secular subjects.

Mr. WAGGONNER. It is a pretty thin line, is it not?

Mr. MILLUS. It is a thin line, but it is a real line.

Mr. WAGGONNER. You also referred to the work of Gunnar Myrdahl, a Swedish Socialist, "The American Dilemma." Are you recommending to this committee or saying to this committee, to the Congress, that Catholic nonpublic parochial education is now willing to abide by the Socialist works of Gunnar Myrdahl?

Mr. MILLUS. Catholic parochial education is always open to any students wishing to attend of that particular faith. I cite the fact that 60 percent of the students in Manhattan are black or Puerto Rican and 30 percent in the Bronx are black or Puerto Rican, and so we do educate a substantial part of the minority in New York City.

Mr. WAGGONNER. That is not the thrust of my question. I appreciate the fact you are willing to accept them as students, but are you willing to teach their teachings?

Mr. MILLUS. When you say "their teachings," Congressman, would you elaborate?

Mr. WAGGONNER. "The American Dilemma," you are familiar with it. You have read it. So have I.

Mr. MILLUS. The Catholic school is founded as a religious institution to teach the beliefs of the Catholic faith. Anything consistent with that would be taught in the schools. Certainly anything inconsistent would be pointed out as a matter of teaching in an eclectic philosophy, but it stands on the principles of the Catholic faith.

Mr. WAGGONNER. My position is not as adverse to yours as you may assume. You don't know anything about me and I don't know anything about you. But as a nonlawyer on this committee I have to resolve for myself the constitutionality of such a proposal before I can reach a decision on its merits.

On page 6 of your statement, your last paragraph, you say, "Because the Federal district courts have declared the New York State-mandated Services Law to be unconstitutional as well as the maintenance provision in the three-pronged bill passed this year by the State legislature . . ." What leads you to believe if the Federal courts did this with respect to a New York law, that another law would suddenly become constitutional?

Mr. MILLUS. Sir, you hit on the ultimate issue in this entire matter. Nothing we do here either in the Halls of Congress or the Senate is going to be the final answer. The Armageddon of the parochial schools will be fought across the street if that is where the Supreme Court of the United States is and what can come out of it, I don't know. But I say this: From the history of the nonpublic schools in this country they are now a part and parcel, they are so integrated in the goal of education that they are so worth saving for what they have produced and what they assist the Government to do, that I believe that the Supreme Court can find a constitutional way out of this.

They found it in *Tilton* v. *Richardson*.

Mr. WAGGONNER. Are you suggesting that the Supreme Court should become a fully effective legislative body and let that body legislate?

Mr. MILLUS. No; I believe the legislature should have its own autonomy and independence. Yet you and I realize that the Supreme Court has the ultimate say as to whether legislation is constitutional or not. So, again I repeat, no matter what is passed in the legislature it is the Supreme Court that must supply the final answer. However, I say this: It is important that all of you gentlemen in Congress understand the legal aspects very thoroughly so that you phrase your bill in such a way and in keeping with the decisions of the Supreme Court that it will pass muster on that day when it comes before them. For example, on page 17, the first full paragraph that is cited is from a decision of the Supreme Court.

The Supreme Court said that aid must take the form of a bill whose purpose and primary effect is not the advancement or inhibition of religion but rather one of a secular legislative purpose whose primary effect neither advances nor inhibits religion. That statement was in a Supreme Court decision. It must be one of a secular legislative purpose whose primary effect neither advances nor inhibits religion. That is the thrust of my report today, that a bill which merely aids one to obtain the secular subjects in a parochial school is not one which aids in the establishment of a religion nor does it inhibit religion.

It is neutral; therefore that is why I believe the Supreme Court of the United States can ultimately find that a tax credit bill as passed by Congress does fit within the constitutional structure of the first amendment.

Mr. WAGGONNER. In closing—I know we have to go to the floor now—should the Congress enact this or some tax credit proposal and should this tax credit proposal result in the salvation or saving of nonpublic education, I fail to see how anyone could classify it as "neutral."

Thank you.

Mr. MILLUS. Sir, would you please repeat your last five words? You failed to see?

Mr. WAGGONNER. I fail to see how anyone could classify it as "neutral."

Mr. CAREY (presiding). Let me welcome, in the chair, my neighbor from the city of New York, Mr. Millus, and just to show that the parochial school institutions do promote diversity, if my recollection is correct, Mr. Millus ran a very rigorous and, may I say, well-organized and demonstrably effective campaign in the county of Kings for the position of district attorney in the Republican Party; is that correct?

Mr. Millus. That's right.

Mr. Carey. It is a pleasure to have you here. I don't know what the apportionment did and where you reside now, but I will be pleased to have you as a constituent if that is done, no matter how you do in the next election. I think you have spoken effectively.

The Home-School Association is something new that has developed. Would you tell me, briefly, does this organization transfer the conduct of the school's affairs away from the clergy where it was solely resting for so many years into the hands of the parents and constituency of the school itself?

Mr. Millus. Yes; very much so, Congressman. You will find a dedicated interest in running their own school system on the part of the people, and taking a great interest in it. That is why I was amazed to hear the speaker preceding me say that the Catholic people are not interested in preserving their schools. I as president of the association had a mandate, almost a hundred percent mandate, to go to Albany and seek aid. It was backed up by 30,000 marching before Governor Rockefeller's office.

The Catholic laity is dedicated to the preservation of their schools, at least in Brooklyn. At least the parents of the 150,000 students that I represent are.

Mr. Carey. Thank you for that.

Now the Home-School Association membership is not limited to Catholic parents, am I correct? It is the parent of anyone who attends the schools and you also have non-Catholic parents who are members of the association with children in those schools?

Mr. Millus. That is correct.

Mr. Carey. Isn't it true that the closing of the schools due to lack of funds in your association area, the Brooklyn area, has fallen with greatest impact on the poor families, particularly the black and Puerto Rican families who wanted these schools in their community, but could not afford them; is this correct?

Mr. Millus. That is very true. The $700 tuition was absolutely prohibitive.

Mr. Carey. That is in the secondary schools?

Mr. Millus. In the secondary schools. I went to St. Augustine, I paid $7 a year, a book bill. That was the only expense of my obtaining a Catholic education in Brooklyn in 1939–42.

Mr. Carey. I wish the gentleman from Louisiana had not left the committee. I was going to remind him that the first bill to aid children in any denominational school in the country, which, by the way, has since been upheld by the courts, was the Louisiana book bill, which was passed during the regime of Huey Long. That is a historical fact which all Louisiana people might remember.

Isn't it true that the courts have, in a number of instances, upheld aid which was not ideological in character and which fulfilled a secular purpose? One such instance is the New York State textbook loan bill, which is an exact duplicate of the Federal textbook program. So the court has upheld, in at least that instance, a form of aid which the gentleman might not find to be neutral, yet fulfilling the court guidelines.

Mr. Millus. Yes. The trend is toward aid starting with a very radical case in 1925 of *Pierce* v. *Society of Sisters* and going up to

Everson and going into the *Board of Education* v. *Allen* and *Walz* v. *Tax Commission* and even the case of *Tilton* v. *Richardson* decided the very same day that the Supreme Court decided the *Lemon-Di Censo* case.

Mr. CAREY. Would you agree that nothing could be more ideologically sterile or pure, if you will, than the simple remission of tax credits or liability forgiveness on the tax form? This is exactly the way in which we have chosen to aid the political parties. Nothing could be more sterile or free from influence than that.

Mr. MILLUS. Exactly. And the same thing with the GI bill that we all benefited from. I went to Harvard Law School only because I chose Harvard Law School with my money rather than some other institution.

Nobody ever worried about the constitutional effects of choosing a private or a public school, but at least I had the choice.

Mr. CAREY. Harvard Law School produced at least two great Americans, the chairman of this committee and yourself. That could account for it. I would like that statement to remain in the record.

The last point I would like to make with you is this: Is it the intent of your Home School Association to do everything in its power to assist those who cannot afford to enter the nonpublic schools to be able to attend? Is that your policy?

Mr. MILLUS. Yes. We are certainly making a concerted effort to preserve the Catholic schools in the ghetto areas; 54 of the 201 elementary schools in Brooklyn receive title IV aid which has to be based on a deprived area or ghetto area income. So we serve a tremendous amount.

Mr. CAREY. In financing these schools do the parishes that have more funds available actually assign moneys or subsidies to the poor areas which cannot afford to maintain their schools?

Mr. MILLUS. That is right, because the ghetto school areas run us a deficit of $1.5 million a year, which we have been paying over the past few years. Where did that come from but from the parishes, the more affluent parishes giving to the bishop and the bishop supporting the 23 schools. That is $1.5 million which we can't stand much longer.

Mr. CAREY. The administration witnesses on the first day of hearings endorsed in principle the remission feature under which those who do not have any money and, therefore, are not paying taxes or those who do not make sufficient money to have a tax liability would also receive some benefits under this bill. The administration recommended that the remission feature be separated from the general tax credit because of the constitutional question.

Would you favor that also?

Mr. MILLUS. I would, but I would also add this, Congressman. No student was ever turned out of the Catholic schools in the Diocese of Brooklyn because his parents could not come up with the tuition. When this tax credit bill comes through and those people are able to pay, they will also carry those who have not the money or do not benefit from this bill. But it is far more preferable to have some type of benefits in that bill.

Mr. CAREY. Now one of the things we don't want to do is to label this a bill to aid "fat cats." This is not a bill aimed only at granting high income people additional tax benefits over and above those which they may or may not presently enjoy.

I will admit to one weakness in the bill. It covers income levels as high as $50,000. Other bills provide a cutoff at the $18,000 adjusted gross income level. The distinguished minority member, Mr. Byrnes, has provided in his bill for a partial remission. In other words, the remission of only a percentage of tuition would have a more beneficial effect in that it would not encourage immediate and steeply increased tuitions. How do you feel about that?

Instead of the full credit, a portion of the credit to discourage the full increase in tuition?

Mr. **Millus.** I believe it should be graduated, just as the income tax is graduated, so too the benefits bill could be graduated, namely, with the lower income families receiving the greatest benefit.

Mr. **Carey.** I am pleased to hear that. Would it be feasible perhaps to have the tax credit for the income group below $18,000 and then an alternative deduction for those who are above that figure so that overall they would not get any more than the present limited deduction available for charitable purposes? In other words, if they choose to give moneys to a school instead of contribution to another kind of charity, they could do that, but not exceed the overall current limitations, so there would be no actual revenue loss to the Government. Would you favor that?

Mr. **Millus.** That sounds very plausible, Congressman.

Mr. **Carey.** It was a landmark day in publication history in my city when the New York Times clearly reversed itself and said we must preserve the alternative school systems in our country; this was quite a surprise to many people and showed the enlightened new attitude of that editorial staff. Now the bill that was struck down was not necessarily violative of the Federal Constitution. It was struck down because of the explicit wording of what has been called the Blaine amendment in the New York State Constitution. Isn't that correct?

Mr. **Millus.** Yes. I believe that eventually the Blaine amendment will be overlooked by the Supreme Court in that the first amendment preempts the field and that is the criterion that we must look to in judging constitutionality.

Mr. **Carey.** As a lawyer, then, and as a spokesman for the federation, is it your feeling that at this stage the tax credit approach fulfills the guidelines, as laid down in the *Lemon* and *Tilton* cases of being the kind of aid which is nonideological and which does not have excessive entanglement and fulfills legitimate public purposes?

Mr. **Millus.** I do so, Congressman.

Mr. **Carey.** Let me say I am pleased to have you here as a neighbor, as a colleague of the New York Bar, as a coreligionist, and certainly as an able spokesman. I understand that your family in sizable numbers is in the room.

Mr. **Millus.** Yes, I have my five boys here, but we left our two-and-a-half-month daughter home because we didn't think she would appreciate this hearing.

Mr. **Carey.** I hope the record will be available when she is old enough to read it in the parochial school and she will have reason to be proud of her father for his testimony today.

Mr. **Millus.** Thank you.

Mr. CAREY. The committee stands recessed until 2 o'clock when further witnesses will be heard.

(Whereupon, at 12:35 p.m. the committee recessed, to reconvene at 2 p.m. of the same day.)

AFTER RECESS

Mr. CAREY. The committee will be in order.

The next witness scheduled on the committee list today is Rev. Jay A. Wabeke, on behalf of the Michigan Council Against Parochiaid and the Michigan Federation of Chapters of Americans United.

You may proceed, Mr. Wabeke.

STATEMENT OF REV. JAY A. WABEKE, CITIZENS TO ADVANCE PUBLIC EDUCATION, MICHIGAN FEDERATION OF CHAPTERS OF AMERICANS UNITED, AND COUNCIL AGAINST PAROCHIAID

Reverend WABEKE. Mr. Chairman, unlike some of my predecessors, I will not bore you over the 15 minutes allotted to me. I appreciate the time allotted to me by this committee. In spite of the fact that I am not sponsored by one of the members of this committee, and although I am not a member of one of the most distinguished families of Michigan, I feel that I am sponsored by the overwhelming majority of the citizens of the State of Michigan, as in 1970 they responded to the issue of parochiaid in passing proposal C, an amendment to the Michigan constitution which strictly forbids parochiaid either directly or indirectly with State funds.

I am former chairman of the board of CAPE (Citizens to Advance Public Education) and now president of the Grand Rapids area chapter of Americans United; president of the Michigan Federation Chapters of Americans United and member of the board of CAP (Council Against Parochiaid), which represents the following Michigan member organizations:

American Civil Liberties Union; Americans United for Separation of Church and State; Anti-defamation League; Church Coalition; Citizens to Advance Public Education; Detroit Baptist Pastors Associations; Detroit Council of Organizations; Jewish Community Council; Lutheran Church in America; and Metropolitan Detroit Council of Churches.

Michigan Association of Elementary School Principals; Michigan Association of Intermediate School Administrators; Michigan Association of Professors of Educational Administration; Michigan Association of School Administrators; Michigan Association of School Boards; Michigan Association of Secondary School Principals; Michigan Association of Supervision and Curriculum Development; Michigan Baptist Ministerial Conference; Michigan Conference of Seventh Day Adventists; and Michigan Congress of Parents and Teachers.

Michigan Congress of School Administrator Associations; Michigan Education Association; Michigan Federation of Teachers; Michigan Occupational Association; Michigan School Business Officials; Trade Union Labor Council; and United Methodist Church.

I am Jay Wabeke, a retired Congregational minister from Coopersville, Mich. I was born in Grand Haven, Mich., from Dutch parentage.

My ancestors left the Netherlands in 1847 to escape the tyranny of a Protestant state church and settled in Holland, Mich., so that in a new world they might enjoy the blessings of religious freedom under the Constitution.

I was educated in the public schools of Holland, Mich., and took my undergraduate work at Hope College, Holland, Mich., a school of the Reformed Church in America. I took 3 years of graduate work at the University of Michigan in law philosophy and history, taking the masters degree in philosophy with honors.

I then took my theology at the Harvard Divinity School and then was ordained as a Congregational minister. I served Congregational churches in Winchester and Marshfield Hills, Mass., and Miami Beach, Fla. I am now retired as an active minister spending most of my time to maintain the great American doctrine of separation of church and state. My theme today, "The Beat of a Distant Drum," is based on a quotation from Henry David Thoreau, the American naturalist and philosopher.

> If a man does not keep pace with his companions, perhaps it is because he hears a different drummer. Let him step to the music he hears, however measured or however far away.

How an overwhelming majority of the Michigan electorate came to hear "The Beat of a Distant Drum" and register a great victory in passing proposal C in the November election of 1970 which forbade the use of public funds directly or indirectly to support private education and which said in no uncertain terms that we would not sell public education for a mess of parochial potage is the story I wish to relate to you this afternoon in opposition to the proposal before you.

A group of Michigan citizens, becoming concerned with the inroads being made in our State by supporers of private education in seeking to obtain public funds to bail them out of their supposed financial problems, organized in 1967 to fight this effort and support public education.

This organization was called CAPE (Citizens to Aid Public Education). By 1969 the political pressure upon our legislature by the forces of CEF (Citizens for Educational Freedom) became so great that it was evident to the CAPE membership that heroic measures were needed to save public education and the doctrine of separation of church and state.

Under the leadership of Mrs. Harriet Phillips, Jewish, and chairman of the board of CAPE, the Council Against Parochiaid (CAP) was formed, consisting of 27 organizations previously noted. It soon became evident after the legislature had passed an act giving aid to private schools that the only remedy left was to make a direct appeal to the people by means of an amendment of the Michigan constitution forbidding parochiaid and thus learn the will of the people.

Some of the finest constitutional authorities of the country were engaged to draw up an amendment to the Michigan constitution to effect this purpose. Then a campaign to obtain the number of proper signatures on a petition to place the amendment on the ballot for the November election of 1970 was waged successfully. At that juncture, we discovered, perhaps not to our surprise, that all of the power political, economic and social interests of the State lined up to thwart us at every turn of the road. We found that a Republican Governor still in office today and a democratic attorney general still in office today used all of their political and legal power in an effort to keep the amendment off the ballot after we had presented more than sufficient signatures to qualify.

This was an effort clearly aimed at preventing a legal expression of the will of the people. Here it was only by an overwhelming decision of the Michigan Supreme Court that the amendment was ordered on the ballot. Then there took place a campaign such as will never be forgotten by the living and came to be known in history as one of the watershed campaigns for human freedom.

Every trick known to Madison Avenue was used to defeat the amendment. Buttressed by funds estimated as high as $3 million coming largely from the wealthiest institu[illegible] in the world, who claim they do not have enough money to keep their own schools open and still make this claim to you, the forces of CAP with less than $300,000 went forth and like David slew Goliath.

It did not take long for the public to learn the people and organizations in support of the opposition to an amendment prohibiting parochiaid. In full-page ads in every important newspaper in the State there appeared the names of those who controlled the power structure and lent their names in opposition to the amendment—the presidents of General Motors, Ford Motor Co., Chrysler Motors, Detroit Edison, chairman of the board of the Old Kent Bank of Grand Rapids, vice president of Calvin College, the Michigan Chamber of Commerce, Cardinal Deardon of Detroit, Monseigneur Zerfas of Grand Rapids and many others.

Who were some of the names opposing the awe-inspiring list above? These did not appear in full-page ads. The antiparochiaid forces did not have that kind of money. They are the unsung and unknown heroes of a glorious battle, people like Bob Chase, an Episcopalian, Republican, and teacher at Grand Rapids Junior College; Mrs. John Ploeg, housewife, Republican, and member of the Christian Reformed Church; Mrs. Kenneth Hall, Democrat, housewife, and Catholic; James Bottje, Democrat, Catholic, and factory worker; Ralph Richman, retired insurance agent, Democrat, and Lutheran; Jerry Postema, a Christian Reformed minister at the time in Holland, Mich., and now in Columbus, Ohio, and a Democrat; Al Dilley, an attorney, Republican, and a member of the United Church of Christ; Tom Ford, a Republican, Episcopalian, and a member of the Michigan Legislature, a brother of your own Jerry Ford who had the courage to stand against parochiaid in a district where that stance was not popular; and Jay Wabeke, a retired Congregational minister, a Democrat, from Coopersville.

Who ever heard of Coopersville? These and myriads like them may never be noted on the pages of history but what they did for human freedom and dignity is now part of the great human heritage and millions unborn will bless the memory of their courage.

These unsung heroes heard "The Beat of the Distant Drum." They heard the beat of a drum as the rough Dutch burger marched to his death during the Spanish Inquisition, his only crime being a wish to worship God according to his conscience. They heard the beat of the drum as Servitas marched to the stake in Geneva, condemned to death by an edict of John Calvin, the Protestant forerunner of the Protestant sects of our day who would open the lid of Pandora's box.

And these people could never forget the beat of the muffled drum as the funeral cortege slowly wound its way to the hillside in Arlington and laid to rest the last martyred President of our country, nor did they, nor will they, ever forget the words of this first Catholic President as he warned us in season and out of season never to become involved in the kind of legislation which is here for your consideration.

The sound of the muffled drum is still in our ears as we watch the funeral cortege from Northern Ireland carry another victim, Protestant or Catholic, to his final resting place, victims of man's inhumanity to man all in the name of the Christian religion. We say pray God this will never happen in our country.

And so the people of the State of Michigan who won a landslide victory for human freedom in the election of 1970 say to the supporters of such legislation as we are considering today:

> You shall not press down upon the brow of public education this crown of thorns; you shall not crucify public eduation on a cross of parochial gold flowing from the public treasury.

Thank you Mr. Chairman and gentlemen.

Mr. CAREY. Thank you, Mr. Wabeke. What was the total vote cast and what was the percentage for and against your amendment?

Reverend WABEKE. I don't have the count on the total votes. The percentage was 57 percent.

Mr. CAREY. What do you think motivated the 43 percent who voted against the amendment?

Reverend WABEKE. I would say they were motivated by various reasons. They were motivated from the standpoint of obtaining money for their particular parochial schools. That seemed to be the primary motivation.

Mr. CAREY. If 43 percent comprised all who wanted money for parochial schools, wouldn't some of them not have children?

Reverend WABEKE. That is possible, as well as some of the 37 percent came from the Catholic church.

Mr. CAREY. Would you suggest that referendums are not always the ideal way of settling critical questions of this time? Some time ago it was noted that if we were to submit the Bill of Rights to a national referendum, it would not pass. Do you agree with that?

Reverend WABEKE. This could possibly happen, sir. I would say that possibly we might have a suggestion of a better method. I don't know of a better method.

Mr. CAREY. It is an interesting experience you recount here. You say that Mr. Ford's brother was among those who supported your amendment.

Reverend WABEKE. This is correct, sir. He supported us at every turn of the road.

Mr. CAREY. I respect all members of that family and I have very high regard for the minority leader in Congress who is a supporter of the tax credit bill before this committee.

I think you will agree that the President, as well as the candidate of the Democratic Party for President, have a very real sense of their constitutional obligation to uphold and defend the Constitution. The President acts in good conscience and with regard to the best advice he can muster in his administration when he makes recommendations to the Congress.

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I assume you are aware that witnesses on behalf of the Treasury, and the Department of HEW indicated that the tax credit approach was constitutional and did satisfy the requirements of the first amendment—separation of church and state.

I think in good conscience you would say that the President feels he is abiding by the Constitution in making this recommendation; would you not?

Reverend WABEKE. I am aware of that. I am equally aware of the fact that we who oppose it on constitutional grounds are equally sincere.

Mr. CAREY. Once again there is a referendum coming up. As in all presidential elections, the people will make their decision based on their view of the Constitution. I am pleased to have your testimony and pleased to hear of the way you conducted your campaign in Michigan.

Mr. SCHNEEBELI. I was not aware of what happened in Michigan. It is not only an interesting story, but you tell it in an interesting fashion. I am very intrigued with your honesty. Whether we agree with you or not, it is good to have you come before us.

Reverend WABEKE. Thank you very much.

Mr. CAREY. The next witness is Mr. Gaston Cogdell on behalf of the Ohio Free Schools Association.

Mr. Cogdell, would you come forth?

STATEMENT OF GASTON D. COGDELL, OHIO FREE SCHOOLS ASSOCIATION

Mr. COGDELL. Mr. Chairman and honorable members of the House Ways and Means Committee:

I am Gaston D. Cogdell representing the Ohio Free Schools Association, a 12-year-old State organization, with our headquarters at 203 North High Street, Columbus, Ohio.

On behalf of the Ohio Free Schools Association and on behalf of the overwhelming majority of the citizens of Ohio who have repeatedly registered their opposition to all forms of parochial aid, we urge you to reject H.R. 16141. We also urge you to reject the other 50-some-odd bills that have been submitted to this session of the Congress which would give tax support to parochial and private schools through tax credits and rebates from the Federal Treasury as well as all other similar legislation which might be submitted to you in the future.

This legislation gravely threatens both of the two unique features of our society which set it apart from all others and which are the taproots of our greatness as a Nation. These two features are (1) our system of publicly owned, democratically operated, tuition-free public schools, and (2) our adherence to the principle of church-state separation. This legislation threatens our public schools because it proposes to divert public funds from the public schools to the nonpublic schools.

It threatens our adherence to the principle of church-state separation because it will, in effect, grant State financing to church educational and indoctrinational activities.

We wish to point out to this committee that attendance at a public school is a civil right, possessed by every American child—a right which cannot be denied him, regardless of his religion, his race, his economic status, or any other consideration. Attendance at a private or parochial school, on the other hand, is a special privilege, which can be denied on any grounds whatsoever.

Nonpublic schools can and do discriminate and deny entrance to children on the basis of religion, race, inability to pay tuition fees, and for many other reasons.

Civil rights which are possessed by all equally can properly be subsidized from taxes, which all are compelled to pay, but special interests cannot justly be supported by taxation. You are here considering legislation to support special interest, special privilege, highly selective, segregated schools in opposition to the ideal of the use of public funds for public institutions and for the general welfare alone.

We submit to this committee that America's public schools are the foundation stones of our free, democratic society. They and they alone have provided that broad base of tuition-free education upon which our national progress has been founded—making the fruit of the tree of knowledge readily available to every child, regardless of his race, religion, or economic background.

It is in our public schools that America's youth, drawn from the most diverse ethnic, religious, and economic backgrounds, have learned to live, learn, work, and play together and have embibed together a common civic heritage. If America is the melting pot of the world, the public schools are the melting pot of America.

The most unifying, democratizing, and equalizing of all the institutions of our society are our public schools. Whatever may be their problems and shortcomings, and no doubt they have many, they are the embodiment of one of the noblest ideals ever pursued by any society—the ideal of equality of educational opportunity for every child in America in schools serving not narrow, private, and sectarian ends but the public interest; schools owned not by the clergy of some religious sect but by all citizens; schools dedicated to education rather than indoctrination; schools offering professional and job opportunities equally to all citizens of all faiths, without discrimination against any. Whatever might be the problems and shortcomings of the public schools, they will not be solved, but aggravated, by taking funds from them and giving those funds to parochial and private schools.

Until lately, it has been almost universally accepted in America that public funds should be spent for public schools only and that church and private schools should be supported by church and private funds. In the past several years, however, this arrangement has been under a mounting crescendo of attack.

The hearings are a part of that attack and are intended to pave the way for the use of tax funds for parochial and private schools by a devious strategem; namely, the disguising of those funds as moneys belonging to a taxpaying citizen which are simply being returned to him. This subterfuge does not conceal the fact that this proposal and these hearings constitute a serious challenge to the public school's exclusive right to public funds.

Mr. Chairman and honorable members of this committee, we beg you to take note of what has happened in our State of Ohio since the practice of aiding nonpublic schools with public funds has been inaugurated.

Ohio presents the best possible example of what happens to both education and to government when public funds begin to be siphoned off into parochial and private schools. It all began a very short time ago in 1965 when, after many years of persistent efforts, the parochial school interests finally managed to pass legislation providing public transportation—busing—for private school pupils.

We were assured that this legislation would cost the taxpayers only $1.8 million per year and many said that if this was all that was necessary to satisfy the insistent demands of those who wanted some tax aid for parochial schools, it should be given to them. But, gentlemen, that was not the end of such aid but was only a small beginning, and far from costing $1.8 million per year parochial school busing cost taxpayers of Ohio over $5 million in visible costs last year with many additional hidden costs impossible to compute.

Only 2 years after the bus bill was passed, in 1967 the parochial school interests succeeded in passing the $36 million auxiliary services for nonpublic schools bill. Then 2 years later, in 1969, they passed the parochial and private school teacher salary supplement law.

Last year, 1971, they passed the nonpublic school tuition grant bill, and this year, 1972, the Ohio tax credit bill. During this same period of time money from the Federal Treasury has been pouring into Ohio's nonpublic schools in ever-increasing amounts through a multiplicity of Federal programs.

Every dollar of public money given to private schools is desperately needed by Ohio's public schools. Year before last the Nation was shocked that Youngstown had to close down its entire public school system for 6 weeks for lack of funds. This year not only Youngstown but Dayton, West Columbus and more than a dozen smaller school districts were forced to close because they ran out of money.

Hundreds of public school teachers have been laid off throughout Ohio. In Cincinnati alone, more than 200 have been laid off and 200 more placed on a standby basis. New construction of public schools has come to a virtual standstill in Ohio and thousands of well-qualified young teachers graduating from Ohio's colleges and universities have been unable to find jobs.

One of the most baleful results of this bonanza of hundreds of millions of public money going to private educational and indoctrinational activities—almost exclusively to the schools of one church—has been that one's religious affiliation and attitude toward parochiaid has become a hidden but vitally important issue in Ohio politics, just as it is becoming the big "silent issue" in national politics.

I am convinced that probably that is the reason these hearings are being held. The people in Columbus and the people in Ohio are overwhelmingly opposed to any form of parochaiaid. This summer the "Columbus Dispatch" has been conducting public opinion polls at various county fairs over the State.

To the question "Do you favor the use of tax funds for private schools?" the response has been negative by a 2 to 1 majority. Last year (July 1971), the Ohio Free Schools Association had a private, out-of-State organization to conduct a poll through the State on this question, "People who send their children to religious schools pay taxes for support of the public schools, as well as paying for the support of the religious schools. Do you think public taxes should be used to support the religious schools, also?"

By the way, this was the same wording which was used by the Gallup poll in a similar poll which they took. The names of those polled were selected at random from various telephone directories. Of those responding, 57.1 classified themselves as Protestant, 25.3 as Roman Catholic, 2.3 as Jewish, and 15.3 as "other" or "no preference." The poll results were almost identical with those being obtained by the Columbus Dispatch in its present efforts along this line—61.7 percent against and 37 percent for.

When the people are allowed to express their opinion on this issue, in Ohio or elsewhere, they say "public funds should be spent for public schools only." This is one issue on which the majority of the people agree wholeheartedly with the law, the Constitution, and the courts of our land.

In the past two decades this very question of tuition grants and rebates from the public treasury of tuition payments made by citizens to parochial and private schools has been adjudicated by the Federal courts again and again. In every single instance the courts have ruled that such payments and rebates are unconstitutional and are in violation of the first and 14th amendments—*Almond* v. *Day; Swart* v. *So. Burlington School District; Griffin* v. *Prince Edward Co.; Hall* v. *St. Helena Parish; Lee* v. *Macon Co. Bd. of Ed.; Poindexter* v. *Louisiana Financial Assistance Commission; Brown* v. *So. Carolina State Bd.; Coffey* v. *State Educ. Finance Commission; Lee* v. *Macon Co. Bd.;* and most recently just this year (1972), in Ohio, *Wolman* v. *Essex* and in Pennsylvania, *Lemon* v. *Sloan*.

Mr. Chairman, in view of the fact that you and every member of this committee are under solemn oath to uphold the Constitution, is it proper for you to be trying to find some way to do what the courts have repeatedly said the Constitution forbids you from doing—diverting public funds to sectarian schools through tuition payments?

The tuition payment subsidizes the entire parish school and all of its educational indoctrinational activities and personnel, sectarian, and sacerdotal as well as secular. That is why I was amazed a while ago when Mr. Miller said he didn't seek or want any funds for any except secular aspects of our schools.

But what you are considering here is money from the public treasury for the whole school system. The tuition payment subsidizes every aspect of it so that should make it impossible for you to consider this bill on the face of it. Even the most ardent proponents said they don't want money except for the secular part.

Mr. CAREY. Mr. Cogdell, would you complete your statement and then we will go into your colloquy. Let's go to the end of your statement in order to get it completely on the record, if you will.

Mr. COGDELL. When tuition payments are made to the parish school from the public treasury it constitutes governmental support of the particular religious system and the particular kind of worship and structure of ecclesiastical authority which that parish school was brought into being to perpetuate. This is true if those tuition payments are called tax rebates or credits just as much as if they are called parochial and private school tuition payments. At stake in this controversy is nothing less than our whole arrangement of church-state separation here in America and the precious religious freedom of every citizen.

In addition to possessing the defects possessed by all other kinds of tuition-reimbursement plans, the tax-credit proposal is discriminatory against the very segment of our population toward which any governmental aid should be directed; namely, the poor and disadvantaged. Only those whose incomes are large enough to require them to pay Federal income taxes for the stipulated amount of the tax credit allowed can receive the benefit of this kind of "parochiaid" legislation. This is legislation for the sole benefit of the affluent and of the exclusive special-interest, religiously, racially, and economically segregated private schools of the affluent at the expense of the poor and of the general public.

It will drain off the economic lifeblood from the schools which belong to the general public—schools which all may attend and which the poor must attend—and will siphon that money into schools which belong, by and large, to the clergy of the richest, most economically and politically powerful ecclesiastical body in the world.

No surer way could be found to undermine our national unity and to bring to our shores the class, racial, and above all religious strife that has always plagued Europe and which even now is the curse of Northern Ireland than to initiate the sort of public support for parochial and private schools that you are here contemplating.

It was not too many years ago that many of you on this committee, including your chairman, Mr. Wilbur Mills, were expressing opposition to Federal aid even for public education. Yet, today you are almost ready to give approximately $1 billion per year from the Federal Treasury to aid private education—and worse, to aid sectarian indoctrination.

We plead with you—don't do it. Let Ohio's bitter experience teach the Nation a lesson. Reject H.R. 16141 and all similar parochiaid proposals.

Thank you.

Mr. CAREY. Thank you, Mr. Cogdell, for your statement.

In the interest of the record let me say that the chairman, in calling these hearings, was not, I trust you agree, motivated by any narrow political considerations. The hearings were called in response to a letter from Mr. Weinberger, Director of the Office of Management and Budget, requesting that these hearings be held by the Ways and Means Committee.

The request came from the administration. It is also true that a large number of bills, differing in many respects, have been placed in the committee's jurisdiction. Similar bills have been introduced by such outstanding members as the ranking members of this committee, Mr. Byrnes, Mr. Mills, the chairman, the minority leader Mr. Ford, et cetera. I would also state that every issue before Congress is tinged with politics. They are all political questions.

I would hope that you would choose your words with caution and consider whether these hearings, which give you an opportunity to be heard and state your principles, are unwise or should not be held. I hope you don't mdan that.

Mr. COGDELL. Mr. Chairman, what I really meant was that this is the eve of a national election and the administration, it seems to me, is consummating its efforts to point up to special interest groups within our society that it intends to try to obtain aid from the public treasury for parochial schools, that these hearings are at the behest of the administration and those within it and of the general electorate, of the general representation in Congress to give Members an opportunity at this particular time to emphasize and dramatize their support for "parochiaid". The timing of the hearings seems to point up its political implications to me.

Mr. CAREY. I think the best time to hold hearings is when the public interest is at a high level. I think it serves the purpose of having both pros and cons based on the merits of the legislation.

You say the benefits of the bill before us would be aimed at the special interest groups and not to those who need it the most, namely, the poor and disadvantaged. Evidently you are not familiar with the interpretation of the bill as expressed in the explanation or with the colloquys which have taken place between administration witnesses and members of the committee which indicate that, if the committee reports out a bill, the bill would clearly require that the negative income tax system be used to provide the same benefits to the poor and disadvantaged as it does to middle- and high-income families. It is not true, then, that the bill is exclusively for those who pay income taxes.

Mr. COGDELL. In which case calling it a tax credit bill is certainly a misnomer. I think it should be called a bill for tax subsidy for parochial and private schools.

Mr. CAREY. It is called the Public and Private Education Assistance Act of 1972. It is not entitled "Negative Income Tax". It is the Public and Private Assistance Act. You have made no comment on the portion of the bill which would provide over $2.2 billion exclusively for the use of public schools to equalize the lower tax base counties with those with higher tax bases. Wouldn't that kind of a bill help the situation in Youngstown and elsewhere where the tax bases are not sufficient? Wouldn't that help in making adequate funds available to those portions of your State which are not able to keep the public schools operating?

Mr. COGDELL. Certainly, I would say that any moneys that the Congress can find to help general education in the country, not private education, but public education which is operated by the public for the public and is open to all the public, without any discriminatory restrictions of any kind such as those which private and parochial schools have, I would be in favor of that; yes, sir.

I am in favor of that part of the bill.

Mr. CAREY. I trust you favor the Elementary and Secondary Education Act of 1965, which was the first real Federal-aid bill and which is now funded in excess of $3 billion. You favor this existing law, do you not?

Mr. COGDELL. I favor the law except that portion of it which requires that the same benefits and advantages which are received by public institutions shall be received by private institutions.

Mr. CAREY. You misstated the law. That is not the provision of the law.

Mr. COGDELL. I beg your pardon. Do you mean that it states that these funds are not available for nonpublic as well as for public schools?

Mr. CAREY. As an officer of the law, I will not have these laws misstated. It says as far as poor children are concerned, programs for their benefit will be conducted under public auspices. No money flows under the Elementary and Secondary Education Act to any private institution. I think you should know the law.

Mr. COGDELL. Not money, but goods and services go to parochial and private schools.

Mr. CAREY. To the low-income children in the nonpublic schools, no money for those who are not low-income. I take it that you are saying if the low-income children are not in the public institutions, if they need sight conservation or bilingual help, they should be denied them because they are not in public schools.

Mr. COGDELL. I think it should be made available for them in a public institution.

Mr. CAREY. They should leave the institution of their choice and go to the public institution?

Mr. COGDELL. If they need special education, driver training, any kind of special education, there should be centers set up—and there are such centers in many cities—that they should leave the private school and go to the public centers so that they will know that they are receiving a publicly supplied service.

Mr. CAREY. Even if that requires more busing?

Mr. COGDELL. Certainly.

Mr. CAREY. Then you will have a bigger bus bill in Ohio.

Mr. COGDELL. I think that the busing should be paid by the parents.

Mr. CAREY. These are poor parents who have no money. That is what we are talking about.

Mr. COGDELL. If it is a matter of public welfare, then of course——

Mr. CAREY. Then you would not be opposed to additional moneys for busing of that kind in Ohio?

Mr. COGDELL. If it can be proven——

Mr. CAREY. They are poor people.

Mr. COGDELL. Mr. Carey, let me tell you about our situation in Ohio. Title, 1, 2, and 3 ESEA funds are channeled into private and parochial school areas on the haziest kind of computation of the number of disadvantaged children in those areas. There is no sitting down and saying, "How many poor children do you have in such-and-such a school, and who are they—Mary and Henry and Jim?" Not at all. They make a general areawide computation that, let us say, 14 percent of the people in this area have incomes of under $3,000 per year—or whatever the figure is—and, therefore, this school, all of the schools in this area, should receive Federal funds—goods and services based upon this percentage of disadvantaged children. It is done in such a haphazard inaccurate basis that it really doesn't work out the way you say the bill is worded, that it should work.

Mr. CAREY. I am afraid you are again at odds with the national experience because the watchdog committee, the advisory committee on the application of these funds, has consistently said just the opposite. Unfortunately the bill is not working as intended and the poor children of the nonpublic schools are not receiving their share of the benefits. That has been said not once, but 3 years in a row.

So, Ohio is working to the opposite of the experience of the country. I think if that is the situation in Ohio and you are dissatisfied, you should investigate further. One possibility is for you to appeal to your Congressman and Senators and ask that these funds be accounted for.

Mr. COGDELL. I would like to ask you a question, since you are in favor of adding an amendment to the bill giving negative tax benefits.

Mr. CAREY. That is in the legislation.

Mr. COGDELL. Then why not remove the seeming subterfuge of calling this a tax rebate? Why even go through any kind of a tax rebate formula? Why not just say we are going to give $200 a year to parochial and private schools through the parents who pay tuition of up to that amount, and be done with it?

Mr. CAREY. If I thought you would favor the bill, I might change the title to suit you.

Mr. COGDELL. You are admitting this is what you want, to take this much money—which will amount to approximately $1 billion—out of the Treasury and give it to the private schools. Why not be honest about it and do that?

Mr. CAREY. I think my honesty is not on trial here. Let me make it clear to you that the title of the bill is the Public and Private Educational Assistance Act. I have long been dedicated to Federal support to our public schools and as well as to parents who choose to send their children to other schools, as long as we can provide constitutional aid. The Court will soon pass upon the work of Congress and I will support any decision of the Court.

I thank you for your testimony. Any questions?

Mr. CORMAN. I would like to commend the witness for lifting out of this debate the importance to this democracy of public education. Though I missed two of the witnesses I had not before heard that fact which I have long believed. Public education is the cornerstone of democracy.

I think it is well that our chairman has pointed out that there is some pressure from the executive branch for this bill. We in California have been represented by the incumbent President longer than anybody else. He has long been a vigorous opponent of Federal aid to public schools. During his administration as President he has attempted as best he can to live with what happened while he was out of public office. His entire history has been one of vigorous opposition to Federal funds for public schools, and effective opposition, I might point out. Once, when he was Vice President, he had the privilege of casting a crucial vote. That is not lost on me, whatever amount of effort there is placed on this bill. When we talk about sending Federal money to Ohio to assist them in their problems, I wonder if we might be further exacerbating their problems? If the State is to rob its funds for public schools to finance its private schools, then is this the proper time for us to tax all of the citizens to give special help to those States who have made that decision? Doesn't that seem inconsistent?

Mr. COGDELL. That is a very good question. We have tried to point out what has happened in Ohio in our testimony here, that you are going to add onto a series of State enactments already devastating to the public schools of Ohio—bills which have undermined the fiscal foundation of our public schools in Ohio. You are contemplating adding on a Federal program to aid the private schools in addition to what we already have there.

Mr. Corman. There is another point that keeps coming up frequently about the monolithic public school system. It is apparent that if there is anything in the public sector that is not monolithic it is education. We have a greater diversity of public school districts in this Nation than we have in any other public activity.

It really escapes me why we must start funding nonpublic, competing entities to try to evolve better education systems. I am not sure anything in this world is monolithic except hopefully the U.S. Marine Corps. It seems to me there is greater diversity among our public schools, greater efforts to try to evolve the best method of educating young people, than in any of our public activities. Is that a reasonable observation about the public schools system in this Nation?

Mr. Cogdell. I think that is an excellent observation that you have made, that the public schools truly represent each individual section and district. We elect our school boards. A Roman Catholic lady who sends her children to parochial schools said to me recently—"I agree with you 100 percent. Although I agree with parochial school education, I don't think any public funds should be distributed to finance such education."

She said, "After all, we elect our public school board, but we don't elect our bishop, or even our parish priest." Am I not correct, Mr. Carey, in saying that the Roman Catholic schools are owned by the bishops of the dioceses in which they are located, and that the bishops are controlled, shall I say, by the Vatican. Therefore, if you are speaking of a monolithic system, the public schools are answerable, each community's school, to the people in that community, whereas the Catholic system is truly monolithic, and the Catholic schools are owned by the hierarchy rather than by the general public or even by the members of the church.

Mr. Carey. Would the gentleman from California yield to me in order to answer this?

Mr. Corman. Yes.

Mr. Carey. My answer to you, sir, is that if you would like to learn more about the system of education in the Catholic schools or the Lutheran schools or in the Jewish Orthodox schools, I think you should speak to a churchman. If you want to ask me on the basis of my own knowledge, I would have to tell you that the people who own the schools are the people of the church.

Insofar as the Pope owning any part of the parochial schools of the diocese in which I reside, Brooklyn, I must say that he does not have title to any inch of property or stone or stick of those schools. As far as ownership is concerned, the general congregation operates as trustees of the properties of the church. Increasingly, public accounting and public disclosure of the financing, funding and status of schools, hospitals, et cetera, under church auspices are being made.

So the ownership of all these institutions is becoming more and more a matter of public record. New York magazine recently published an impartial and unbiased assessment of the New York Catholic diocese—probably the largest diocese in the country—and found that the church was deeply in debt.

With reference to your point about the bishops owning the schools, it should be pointed out that bishops are not known for possession of worldly goods. Cardinal Cushing of Boston, the leading bishop in the country before his death, made his will and I think the total amount he had besides the bishop ring, which is destroyed on his death, was something less than $93.

Mr. COGDELL. That is precisely the point I am making. It was in Cardinal Cushing's diocese where several schools were closed down by the Cardinal without consulting the parents or anyone. In fact, there was a lawsuit brought in Boston because he did close down one of the high schools which the parents did not think should be closed down.

The fact is that he had title to hundreds of millions of dollars worth of property.

Mr. CAREY. No; the religious teaching order which had been teaching in that school was unable to furnish sufficient teachers and withdrew the contract so the Cardinal had no one to run the school. I know you don't want to consume the time of the committee to worry about the financial difficulties of the churches—Catholic, Protestant, or Jewish. That is a separate question.

I think we should see whether we should support charitable contributions to the church as their principal means of support. That is not, however, the question today.

Mr. COGDELL. The question was the comparative democracy existent within the public school system versus the parochial school system and I was making the point that the public schools, as Mr. Corman said, are certainly not monolithically controlled. They are not a hierarchically controlled structure whereas the parochial schools are.

Cardinal Cushing dies leaving a few hundred dollars in his will.

Mr. CAREY. He had no will.

Mr. COGDELL. Well, as his estate, which means that all these hundreds of millions of dollars worth of property in his name did not belong to him. To whom did all this property belong?

Mr. CAREY. I tried to make it clear that there are trustees of the properties who are lay people, who actually have the title because it has to vest somewhere. Again we are going far afield from the point. Concerning the point made by Mr. Corman, certainly we agree that there is a diversity of school opportunities in the public sector.

If we sit here all day, you will not hear me say a word of criticism of the public schools. I say that since the diversity is a value, all we are talking about is additional diversity. Why stop short with it?

Mr. COGDELL. Would you agree that no public funds should go into a school which is not answerable to the public or which is owned by a clergyman?

Mr. CAREY. I point out that nothing in any legislation I support or have supported would make Federal or other public funds directly available to any church institution. That is not the purpose of this bill. This bill proceeds on the long-held constitutional theory of benefit to the child and not to the institution.

Now you have asked me my position. My position is that I would not support legislation for direct grants to any church-related institution. I believe that to be the law of the land and I agree with the Supreme Court reasoning that to do so might bring about unfortunate and excessive entagiements and contribute to the destruction of freedom of religion.

So I am not supporting what you are talking about. But I do believe the Government has an obligation to assist the child in his education, wherever the child may be found. Anyone who holds against that is saying you should not benefit children.

Mr. **Cogdell**. You are saying that Congress can lawfully give public funds to an individual citizen and say for him to give those funds to a church institution. Just by virtue of passing the public funds through the hands of a private citizen, they become sterilized. You are saying that a private individual can be empowered to do what Congress itself cannot do—namely, channel public funds into religious institutions.

Mr. **Carey**. Would you say we should not give moneys from the social security system to people who make contributions to churches?

Mr. **Cogdell**. No. But you are not advocating that money be given to these people for any purpose for which they wish to use it, but rather, giving it to them with the stipulation that it will be used for parochial or private schools, and for that purpose alone.

Mr. **Carey**. Yes.

Mr. **Cogdell**. You are earmarking these funds for their ultimate target which is the school, whereas the social security payment is not earmarked for anything. A man can go to the store or throw it in a wastebasket. It is his money. The money you are talking about is earmarked for a——

Mr. **Carey**. Just as the child deduction on income tax is only for children, I suspect some of that money is used for tuition. Would you be against that?

Mr. **Cogdell**. Once again you can use the deduction for whatever you want to.

Mr. **Carey**. For your information I use it now to pay tuition in parochial schools.

Mr. **Cogdell**. That is fine.

Mr. **Corman**. I want to point out that my observations went solely to the public schools. I have rankled a bit under the charge that they are monolithic. I have not attempted to establish whether public schools were not monolithic. I think the witness may be in a better position than I to make that judgment. I don't quarrel with it. I just want to give proper possession to it.

Mr. **Carey**. The next witness is Mr. Tim McCarthy on behalf of the Catholic Education Association of Iowa. Mr. McCarthy is not here.

Mr. **Karth**. Would you recognize me at this point?

Mr. **Carey**. The gentleman from Minnesota seeks recognition.

Mr. **Karth**. I want to introduce Dr. Linse. He is president of Citizens for Educational Freedom. He is doing important work back home for one of our outstanding colleges, and he brings to this committee his great expertise and experience.

I am very happy to welcome him to this committee. Thank you.

STATEMENT OF EUGENE LINSE, PRESIDENT, CITIZENS FOR EDUCATIONAL FREEDOM

Mr. **Linse**. As president of Citizens for Educational Freedom, I want to apologize for the sad state of affairs of the typographical errors in my statement. I want to thank Mr. Karth for his assistance and counsel, and for his good offices in connection with my appearance here today.

CEF membership and its board of directors include citizens of every race, creed, and color. CEF has a 13-year record of support for nonpublic education. Incidentally, CEF, in a number of instances, has come in to the public forum to support particular causes in public education in the State in which I live.

Without question, CEF endorses the philosophical position of the President and the many Members of Congress who have endorsed this bill. My testimony today is therefore directed primarily to title II of H.R. 16141.

Why aid such parents? Because nonpublic schools that these parents choose: (1) Provide freedom of choice, long a benchmark of our American ideology; (2) offer friendly and helpful competition to the public schools, beneficial to both public and nonpublic sectors of American education on every level; (3) they supplement the public system, educated 5 million children, and save the taxpayer $3 billion annually, as Professor Kraushaar has noted in his new book, "American Non-Public Schools"; (4) they respond to the needs of minority groups. In some of the large metropolitan areas these schools enroll one-third of all the students and are a stabilizing factor in changing neighborhoods of the poor and lower middle class families; most of these nonpublic schools in addition to the three R's also stress spiritual and moral values in a fashion not permitted to government-operated schools.

Far from being divisive over the course of our history, these schools have contributed to a wholesome variety in the educational enterprise of this country and are an essential part of the total school system.

They have helped us to avoid Government monopoly in education. Congress by amending the higher education bill, a few weeks ago found a way to strengthen the position of nonpublic schools.

All institutions of higher learning, including those sponsored by various religious denominations, now benefit in capital expenditure provisions and in a generous system of grants available to students in any of these colleges and universities, up to $1,400 per student.

As yet, something similar has not been done for parents whose children attend nonpublic elementary and secondary schools. Members of both political parties recognize this need. Both are currently advocating the concept of educational tax credits as a constitutional way of aiding these parents who now face the difficult task of meeting increasing tuition costs. H.R. 16141 possesses elements found in all 41 bills on tax credits that have been introduced in Congress. While they differ in details they all have the same purpose—help for these parents by giving them at least some credit for their educational expenses. H.R. 16141 proposes the $200 tax credit per pupil. A much more realistic figure would be $400 per pupil less than 50 percent of the current expenditure alone in public education in the poorest of States.

Tax credits, except for educational expenses, are not a new idea. The Federal Government currently permits credit for a variety of reasons, such as, for retirement incomes, for business investments, and certain types of foreign taxes.

The Government allows large corporations credit for business expansion. Theoretically, a loss in Federal revenue is incurred in granting such credits. Actually, through the creation of more employment by expansion, Government income is increased in succeeding years through taxes received from such corporations and their employees. Another example is the credit granted to retired persons. Here, the purpose is to help our senior citizens remain self-supporting.

Tax credits for expenses paid to nonpublics chools are very similar in nature. A limited, reasonable amount of tax credit will help parents who wish to have their children attend such schools. The Supreme Court ruled in 1925 that parents have this right, but today, many of these parents, after paying their share of taxes for public schools, are financially unable to exercise this right.

How shall we summarize this argument? Nonpublic schools are a necessary part of the Nation's educational system by providing competition and diversity. They are a safeguard against monopoly, perhaps even against inefficiency, and save taxpayers $3 billion annually. Further, whether children attend a church-related school or a public school is a moot question as long as the school meets educational requirements and observes the regulations of the 1964 Civil Rights Act.

Are tax credits constitutional? We answer, President Nixon thinks so. The Presidential Commission thinks so. A large number of you Congressmen and your colleagues think so. Some leading constitutional lawyers think so. The Supreme Court has never objected to the idea of tax credits in principle while it has rejected other forms of assistance.

From these recent decisions, it is evident that the following criteria must be found in any act which provides aid: (1) the act must have a secular purpose; (2) the primary effect of the act must not inhibit or advance the cause of religion; (3) the act, in its implementation, must not involve excessive entanglement of Government and religion.

Tax credits legislation meet these criteria: (1) the secular purpose is clearly the education of children in those fundamental skills required of all citizens; (2) the primary effect of title II of H.R. 16141 is to help parents exercise their constitutional rights of selecting schools for their children.

The bill neither helps nor hurts religion, while a failure to enact such legislation may inhibit the free exercise of religion. The Supreme Court has stated in the 1963 *Sherbert* case:

> . . . No State may exclude individual Catholics, Lutherans, Mohammedans, Baptists, Methodists, nonbelievers, Presbyterians, or members of any faith because of their faith or lack of it, from receiving the benefits of public welfare legislation.

(3) There is no entanglement of Government with religion in this act; there is nothing different here than in any tax credit or deduction currently allowed in law.

There are a few additional comments I would like to make. First of all, that revenue sharing which in principle is proposed in title I might well also acknowledge the existence of nonpublic schools.

I do not think that is the case with title I of this bill. Second, I would also support what I have heard here today, that there are provisions to take into account the needs and respond to the needs of poor families, though in a fashion different from that proposed in this legislation.

I understand also, from what I have read about the bill, that there are provisions for an upper level cutoff on income, although, I am not clear as to precisely what that level is.

I want to thank the committee for the opportunity to present the position of Citizens for Educational Freedom on pending tax credits legislation. Thank you, Mr. Chairman.

Mr. CAREY. Thank you, Dr. Linse. Are there questions of the committee? Dr. Linse, as head of the Citizens for Educational Freedom, how do you respond to the criticism that any public moneys that are used for the support of children in nonpublic schools divert such moneys from the goals of public education, and therefore, are harmful to public education?

Mr. LINSE. I have heard some of the witnesses comment on this particular question. It would seem to me that if we allow nonpublic schools to close, the financial burden is going to be even greater for public schools than it is today.

Mr. CAREY. With regard to the legislation before us, the administration has proposed that there be a cutoff at $18,000, so that families above that income level would not participate in the benefits.

Do I understand you to say you would favor such a cutoff?

Mr. LINSE. Yes, I do, and so does our organization. I could comment very briefly, in passing, that several of my former students do teach in public and private institutions in the State of Ohio.

I was aware that the problem existed as presented by the former witness. In talking to some of these former students of mine this past summer, they seemed most optimistic that something could be done through Federal legislation that has not been accomplished through State legislation, so that public and private schools could live together and support each other in the years ahead.

Mr. CAREY. You said that certain forms of public assistance had been stricken down by the courts as not satisfying the constitutional requirements. That has not been the case with regard to any Federal legislation which is on the books for support of public or nonpublic schools.

We are correct, are we not, in saying that the cases that have been stricken down are cases where State laws did not meet the criteria set forth by the court? There is no case where Federal programs, as such, have been successfully challenged in the courts.

I am thinking of Headstart, Vocational Assistance, et cetera, which have provisions for participation of non-public-school students. None of these has thus far been stricken down by the courts; is that not correct?

Mr. LINSE. What has occurred is that State constitutions are more restrictive and do not permit certain things. I refer to the Blaine amendment. I would like to point out that in the State from which I come, and incidentally, the Fourth Congressional District of that State, of which Mr. Karth is a Representative, a member of which he is familiar, in one of our courts a tax credit bill was tested and found constitutional in spite of the fact that the State constitution has the Blaine amendment.

Mr. CAREY. That is interesting.

Mr. LINSE. Some of the testimony I have heard has concerned itself with a diversity of ideas concerning funding. I think it is important that we recognize that this bill is specifically a tax credit bill, nothing other than that, and that the judge who decided the *Minnesota* case argued that this particular concept needed to be tried on its own merits, without being colored by a whole host of other things that people might try to read into it.

Mr. CAREY. Thank you. Our final witness is Mr. William W. Brickman, Ph. D., Graduate School of Education, University of Pennsylvania.

STATEMENT OF WILLIAM W. BRICKMAN, PH. D., GRADUATE SCHOOL OF EDUCATION, UNIVERSITY OF PENNSYLVANIA

Mr. BRICKMAN. My name is William W. Brickman. It is a great honor and privilege for me to be granted an opportunity to testify before the distinguished Committee on Ways and Means in favor of H.R. 16141 and other bills designed to aid primary and secondary education through tax credits and/or deductions.

I am professor of education at the University of Pennsylvania, and editor of the educational periodical, School and Society. In addition, I am the father of a 12-year-old child attending a nonpublic school, as well as of two older children who have been graduated from nonpublic elementary and secondary schools.

Moreover, as a teacher, supervisor, principal, consultant, school board member, and evaluator of numerous nonpublic schools all over our Nation, I have been able to note the problems faced by parents who wish for their children the type of educational experience which is in accord with their philosophical ideas on what is suitable for them.

For many years, I have served on the board of directors of the Pennsylvania Federation of the Citizens for Educational Freedom.

Accordingly, I speak to you, honorable gentlemen, as a parent and educator with an extensive educational experience. Nonpublic education has enjoyed a long and honorable development in the history of American education.

According to the emminent educational historian, the late Prof. Robert F. Seybolt, of the University of Illinois, the evidence is strong that private education in American began "as early as 1630" in Boston, and that "girls as well as boys were welcome at any age in the private schools" of that city.

Private educational facilities were available during our colonial period in the form of secondary, evening, and vocational schools which taught a variety of subjects such as mathematics, the sciences, social studies, and foreign languages—including Spanish, Italian, Celtic, and Hebrew among others.

Many influential persons in the American colonies, including the Founding Fathers of our Republic, were products of nonpublic educational programs. From the time of our Constitution until the present, the private schools have contributed considerably to the growth of American education, culture, society, and economy. The freedom from official direction and restraints made it possible for such schools to experiment with various types of administration, organization, curricula, methods, and textbooks and other materials of instruction.

Some early private schools, indeed, offered opportunities to enable blacks to obtain an education, sometimes on a biracial basis. John Chavis, a Negro who was tutored by President John Witherspoon of the College of New Jersey (Princeton University), opened private secondary schools for whites and blacks in early 19th century North Carolina.

In the 1830's, a Quaker young lady, Miss Prudence Crandall, after attempting to enroll a Negro girl in her school in Canterbury, Conn., organized a "school for colored misses," for which she was rewarded with a sentence in the local jail, occupying a cell vacated by a convicted murderer.

It was private education which made it possible for parents to secure for their children an education in consonance with their religious conscience at a time when the public school system was moving in the direction of compliance with the doctrine of segregation of church and state. As America was developing into a great, free, and enlightened nation, it became evident that all parents were guaranteed the right to have their children educated along the lines of their own interests and ideas.

The United States did not force all children and adolescents into a single mold, as totalitarian countries have done. The landmark decision of the U.S. Supreme Court in 1925, *Pierce* v. *Society of Sisters*, stressed the philosophical rationale and the constitutional justification of the existence of nonpublic educational facilities.

> The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the State: those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.

A democracy, then, makes certain that its citizens obtain education that is consistent with his ideals and conscience. We have committed ourselves to a pluralistic society and educational system, or rather to educational systems. Parents have a voice and a choice in the education of their children, not, as in totalitarian countires, where a monolithic system prevails, where controls of an ideological and atheistic nature are imposed upon the education of all.

We owe it to our democratic history and traditions, and to ourselves as individuals, to guarantee a freedom of choice in education to all Americans. Our history, Constitution, and legislation indicate the awareness of the great value of nonpublic education to the Nation, the community, and the individual. Public and nonpublic education have been coexisting and have been copartners in the preparation of young Americans for life as enlightened, efficient, and cooperative citizens.

But, there are imminent dangers to the integrity of the individual in our society. The rising costs of education have made it difficult, even impossible in many instances, for parents to secure for their children the kind of education they desire. Nonpublic schools have been closing down in increasing numbers in recent years. Those that are apparently surviving the financial pinch at the moment are forced to increase their tuition rates.

The burden upon parents, particularly those with several children and low or moderate incomes, becomes heavy and sometimes oppressive. If this situation is not corrected by appropriate legislation, such as the Public and Private Education Assistance Act of 1972 (H.R. 16141), it is very likely that a larger number of pupils will be forced to undergo a form of education which is at variance with their wishes and those of their parents. They will, in effect, become mere creatures of the state.

The weakening of the nonpublic component of our national educational structure will no doubt undermine the foundations of our entire educational enterprise in our democratic society.

The American parents of children in nonpublic schools pay their taxes and loyally support the Government on all levels, on Constitution, and the public school system. It is only right that our Government enact legislation that will enable them to enjoy some tax relief so as to avoid the onus of double taxation.

I urge the committee and, through it, the Congress as a whole to pass H.R. 16141 so that it will be possible for parents to receive credit against the individual income tax for tuition paid for the elementary or secondary education of dependents.

As one who has dedicated his whole life to professional activity in education, I support title I of H.R. 16141, since I am convinced that a properly financed public educational system is a basic necessity for the welfare and security of the United States.

I welcome the program which is designed to achieve the equalization of educational opportunities within the several States. At the same time, I wish to emphasize the essential need for the equalization of the treatment of all children and adolescents in our country, those who attend public and nonpublic schools.

H.R. 16141 is a commendable step in the direction of equalizing the educational opportunities of all young Americans, without regard to race, color, creed, ethnic origin, or other consideration.

It deserves the support of all the respresentatives in our Congress. As an educator and as a parent, I endorse enthusiastically H.R. 1614.

Thank you very much for the opportunity to present my position on this crucial question.

Mr. CAREY. Thank you, Mr. Brickman. The gentleman from New York.

Mr. CONABLE. Thank you, Dr. Brickman. I think we all share your concern that children not become creatures of the state. I think we also share some concern that private schools not become creatures of the state as well.

In your study as a student of comparative education and the history of education, I wonder if you have found examples where the granting of this kind of modest government recognition to the private school system has lead to some degree of government controls or setting of standards, perhaps in other countries.

I think you could easily conceive on an intellectual level that the old saying, "He who pays the piper calls the tune" is something we should concern ourselves with in starting down this path of tax credits. Admittedly, this is a more moderate course than that of institutional grants.

Can you tell us if you have found examples where the granting of tax credits has lead to this?

Mr. BRICKMAN. If I may, I would like to answer the two parts of your question, and I hope I will cover this point as well. In many

States, perhaps in all States, the constitutional control of education lies within the State power.

In other words, regardless of whether the institution is public or nonpublic, it is controlled already without a penny being given by the State. It is already under the legal control. You cannot open a school, even a theological school, and get accreditation, without getting from the State authorization to act as a corporation or some other legal manner.

The private school is already under the control of the State. As a principal once of a private school, I was approached by an official of the New York State Education Department, and he asked if he might visit the school.

If I had said no, he probably would have gone away. But, I felt that there was control over me, so I did not give the State authority any excuse to think I had anything to hide within my school.

In regard to what other countries, Mr. Congressman, in one of the most admirable democratic country that we have in our world and that has been maligned, I would say most maliciously this morning, and I refer to the Netherlands, there is no distinction between public and private in education.

The state contributes funds to schools that are either secular or oriented toward a religion or oriented toward a particular educational philosophy. The state, that is the ministry of education and science in the Netherlands, controls education, but not that portion of education that deals with the particular philosophy of that school.

The state requires good results that will benefit the entire nation, but it does not tell the schools how to do it. I would say that, on the basis of the experience of various countries where I have made studies, the funds have been used to advance the school and the nation as a whole, but there was no control with regard to the peculiar views of the philosophy of the school.

Mr. CONABLE. Your answer would be then that you are not concerned that this would lead us toward a greater degree of regulation because, of course, nothing is to be gained if we make simply another public school system out of the private school system.

Mr. BRICKMAN. Precisely. If I may add, Mr. Congressman, on the basis of our historical experience with the Morrill Act where the Government has given funds to universities and where there has not been any recorded, to my knowledge, any attempt at controlling the inner policies of the universities.

In fact, I do not believe any of our Congressmen present are from Wisconsin, but in the State of Wisconsin, in the beginning of the century, although the university was getting money from the Government, nonetheless, when it was a problem of academic freedom, the State and university prevailed, and nobody said anything that would force them to knuckle under to any pressure from any governmental source, whether Federal or State.

Mr. CONABLE. Now, may I ask another and different sort of question here? In your studies have you learned of any situation where this kind of tax credit, particularly a refundable one, one involving tax remission for those who do not pay an income tax, and therefore, would not be able to claim the credit unless they get a grant, something which some of us were surprised to find the administration supporting earlier, have you found any situations where this practice has been subverted by the institution sponsoring the private school so as to create, in effect, a subterfuge for diverting public money into the institution itself?

This is again a possibility. A church, for instance, which did not have a school previously, could set one up with modest curriculum solely for the purpose of gathering additional contributions underwritten by the Federal Government.

Can you see that possibility ever eventuating? Administratively, it is remote.

Mr. **Brickman.** Well now, Mr. Congressman, in my foreign experience, I find that the tax credit plan is unique. Foreign governments give grants to institutions. The institutions are responsible for the disbursement of funds in terms of the purposes as given by the government.

Mr. **Conable.** Is that so? Is our interest in tax credits a reflection of the large number of taxpayers we have?

Mr. **Brickman.** I would not be surprised at all. I think it is the spread of the economic capability. You referred to the possibility of institutions, fly-by-night or overnight, opening up with modest curriculum.

Mr. **Conable.** We have seen this in the past with respect to the GI bill.

Mr. **Brickman.** Yes; but they were stopped. There were controls to stop any kind of these things.

Mr. **Conable.** It involves the setting of standards.

Mr. **Brickman.** Yes; standards there should be. But I am sure that the Congressman will recall in the past few weeks, the revelations in the New York Times and other newspapers of the so-called diploma mills, and the attempts made by the States, hopefully in coordination with the Federal Government and tax laws, and so forth, to stop any unauthorized and certainly phoney institutions.

I think it is the right of the State to insist on educational standards without imposing any control of what is necessary for the integrity of the educational process.

Mr. **Conable.** So your answer in general is that you see in this mode of recognition of private schools by the Federal Government no real chance for abuse nor any great problem of control; is that correct?

Mr. **Brickman.** Actually, I see it not as a question of schools. I see it as aid to the individuals, as aid to education. As the chairman said earlier, and in the title of the bill, education is something that the parents and children are involved in, as well as schools.

I think of it primarily as the aid to parents and children, rather than schools because the aid will be very limited, and schools certainly need a great deal more than that.

Mr. **Corman.** You were about to yield to me awhile ago.

Mr. **Conable.** I yield.

Mr. **Corman.** We were speculating as to why we were working with tax credits. I was wondering if it is the first amendment that makes us unique.

Mr. **Brickman.** Are you asking me, Mr. Congressman?

Mr. **Corman.** I was trying to help my colleague.

Mr. CONABLE. I am sure Professor Brickman can testify to that better than I.

Mr. BRICKMAN. No; I do not know. I know that we are unique in many respects as a national educational system. While we like to introduce some of the practices of other countries, some of the practices in England, at the same time, foreign countries are taking many of our own practices and introducing them into their system.

So, there is a constant interchange. But, I have never found anything as strong as our double-barreled first amendment guaranteeing the integrity against any imposition by any kind of religious establishment, and at the same time, guaranteeing the integrity of the individual and his practice of his belief. That includes the education of children.

Mr. CAREY. Would I be correct, Dr. Brickman, in saying that it is due to our dedication to the principles of the first amendment that authors of bills of this kind have listened to the Court in its interpretation of the first amendment, and have drawn their legislation to follow the guidelines newly laid down by the Court?

For the first time, we have had guidelines on the application of the first amendment to educational matters, so that the legislation will, in all respects, conform to the Court's interpretation of the first amendment.

Mr. BRICKMAN. I agree with that, Mr. Chairman, thoroughly.

Mr. CAREY. To avoid any notion of enriching the coffers of any religious institution, would you favor safeguards in the legislation so that the tax credit could not exceed a given amount of the cost of education in a given institution? In other words, if the cost is $150—and I don't know anything you can get for $150 in any school—but if it costs $150 to educate a child and the credit were $200, there would be a theoretical bonus to the institution of $50. I don't know of any case where you can educate a child for $200. In the State of Mississippi, the amount is $580 per pupil in the public schools.

Let's assume that the cost of the nonpublic schools was about half the cost of the public schools. In that case the cost of a nonpublic school child in Mississippi might be $250. Would you say then that the tax credit could never exceed, say, 75 percent or 50 percent of the estimated cost of education in the nonpublic school so that it would always require the institution to make a contribution toward the education of the child and it could never be used as a bonus to the institution to receive some religous benefit? What do you think of that safeguard?

Mr. BRICKMAN. I think in line with the discussion we had before and in connection with the constitutional principles it seems to me that this is an aid toward alleviation of difficulties that come up in families toward the education of their own children along the lines of their own philosophy, and that the institution per se should not get the grant.

Mr. CAREY. They may not get the grant, but the tax credit should never be so sizable that it could constitute an inducement to an institution to build more schools or increase enrollments, because they would be getting a benefit based upon the additional enrollment.

Mr. BRICKMAN. I think the prime benefit should be to the parents. I don't think of it as helping the institution.

Mr. CAREY. To make sure it would not help the institution if there was a limit, carefully drawn legislation.

Mr. BRICKMAN. I think that might be reasonable.

Mr. CAREY. I am thinking of doing anything possible to wipe out any position that the Congress is undertaking aid to religion.

Mr. BRICKMAN. Exactly.

Mr. CAREY. You are in the field of international education, a expert of that field and an editor of a periodical. I note that you did speak to your international experience.

Mr. BRICKMAN. Yes.

Mr. CAREY. I listened to references made to the Netherlands. As one who was involved in World War II to free the Netherlands from the domination of the Nazis, I found that the people were very stalwart in their dedication to their country. I don't look upon the Netherlands as an example of a country which is not free.

Mr. BRICKMAN. If anything, if I may criticize you, you are a bit too defensive with regard to the Netherlands.

Mr. CAREY. I had to defend them physically.

Mr. BRICKMAN. If you would become more open and say it is an excellent example of people with deeply differing principles, Roman Catholics with differing views, three types of Calvinists, seculars, atheists, Orthodox, and different types of Jews, all maintaining separate philosophic educationl existence, joined together to make the Netherlands an example of harmony, and to prove that differences that take place among individuals and groups can be used—not only do they not prevent, but they add to the strength of the Nation, and they stood up, as you recall, against the Nazis.

They will stand up against any American philosopher who will say that they are not democratic. I presided over a meeting in The Hague exactly with this type of group of four or five professors, rectors of institutions with varying philosophical dispositions. They disagreed very violently with each other over different principles, but when the American philosopher got up and said, "You people are not democratic," they closed ranks and rejected his charge.

This is what the Dutch have always done. It hurts me very much to hear some of our presumed experts in comparative politics and comparative law say out loud that the Netherlands is not a democracy. I think they are.

Mr. CAREY. I don't know that the testimony went that far, but it certainly was critical of the system in the Netherlands. I can only note, from my experience as an observer of the development of religious freedom in my own church, that those who demanded that the heretofore highly constructed Church of Rome be liberalized and that freedom of conscience and religion be required in all ways were leaders of the church from the Netherlands.

So evidently the Dutch are not moving in the direction of religious restrictions. They are moving in the direction of freedom of religion.

It has also been a favorite tactic of some witnesses to say that this bill would bring on the strife that is going on in Northern Ireland. I was in Northern Ireland this time last year and I found that one of the bonds holding people together and preventing all-out civil war was the quiet discourse among educators and churchmen of differing faiths attempting to make the people respond to the needs of the majority and bring about peace.

I found it difficult to place the blame for the strife in Northern Ireland upon the Northern Irish school system.

Mr. BRICKMAN. I don't think it is a wise statement that I heard someone say this morning. If we just look at England, which supports different types of schools——

Mr. CAREY. You are anticipating my next point. The system in Northern Ireland is not unique to Northern Ireland. The Northern Irish school system as such is part of the same school system of all other parts of the United Kingdom. In the United Kingdom, although it has a state-church, provision is made for support and subsidy of all other religious faiths which maintain separate school systems. So if we argued that all of Northern Ireland's problems stem from the school system, it would have to be explained why the people all over the United Kingdom are not at each other's throats because they have the same school system.

Mr. BRICKMAN. And the Irish Republic.

Mr. CAREY. That's right. Isn't this true also? I was in Israel in January and I found to my surprise, although it is a state which has a religious foundation, the Government makes provision for those who are not of the Hebrew faith to have an opportunity to attend schools of their choice. I would like to have any witness come before this committee or any committee of Congress and say Israel is not a democratic state.

Mr. BRICKMAN. May I add, I was asked by the U.S. Office of Education several years ago to make a study of education in the State of Israel. I visited state-financed Islamic schools, state-financed Christian schools and both for Arabs and other Christians, as well as three or four types of Jewish-Israeli schools.

I traveled to all kinds of schools with ministers and with directors general of ministries, and saw the give and take even in some of the schools that went on and the encouragement of diversity without control by the central government.

Mr. CAREY. Well, I am one of those who has to confess that one of the few cases in which I voted for direct aid to institutions was in the foreign aid bill, which provided for aid to schools in Israel. We have made direct grants in the foreign aid bill to institutions in Israel where religion is taught. So it seems that the interpretation of the first amendment has not been applicable to the expenditure of U.S. funds overseas.

It is curious that although we do not apply it to non-Americans, we deny to Americans the same right to attend religious institutions that we give to our friendly neighbors in other countries. It is a curious working of logic—or lack of logic.

You are in the field of higher education. I have heard again that legislation which is directed to the assistance of chidren in nonpublic schools pose a threat and grave danger in that it would undermine and otherwise subvert the strengths of our public school system.

None of us want to do anything that would impair the public school system. I wonder if you can explain to me how it is that we hear the charge consistently leveled that such legislation will undermine the strength of our public school system, yet in the higher education sector we have had Federal aid as far back as the Morrell Act? This aid to higher eduction has been distributed on a generous basis to schools and institutions for the construction of academic facilities and dormitories. In my experience as a former member of the Education and Labor Committee, I found that the higher educational people and the public educational people consistently came together and stated they both needed support as reciprocal strengths.

Can you explain why that exists in higher education and why we have to be concerned as we are about a similar approach to elementary and secondary education?

Mr. BRICKMAN. Well, higher education is a field where institutions are mutually dependent on each other. The University of Pennsylvania graduates individuals who become professors in other institutions. We draw upon them and the other institutions for our staff. We cooperate with each other in cooperative ventures. As a member of a private institutional faculty, we don't see any threat by Pennsylvania State University, nor do they pose any threat on our part. On the elementary segment of the educational level, I look upon our school as a national educational system rather than as a public educational system.

The national educational system comprises public and nonpublic sectors, both of them cooperating in a national purpose and as such they also help each other. For example, graduates of nonpublic schools serve in various capacities in the public educational system, and I will say vice-versa, so these are intertwined.

The Government has wisely helped higher educational systems not only since 1962, but my recollection goes back to the 1830's where this Congress voted grants to two institutions, one Presbyterian and the other Catholic, George Washington and Georgetown Universities. So we have along history of national aid.

If I can go back even to George Washington, who set aside his own funds for the establishment of a national university here in Washington, we have had all these traditions of cooperation between government, public, and private institutions. This is something I would like to see on the elementary and secondary educational level and I think this bill would be helpful in that regard.

I don't see separationism, but cooperation and mutual help. I don't have any suspicion, as a private school man, of this type of public school people. I have taught at various times at the University of California at Los Angeles, University of Illinois, University of Wyoming, City University of New York, as well as in Loyola College in Baltimore. I have lectured in all kinds of institutions and I don't feel any suspicion going one way or the other and I think this is the spirit that this bill will help to foster, of cooperation.

Mr. CAREY. Thank you very much. We appreciate your testimony. The committee will stand adjourned until 10 a.m. in the morning.

(Whereupon, at 3:47 p.m., the committee adjourned, to reconvene at 10 a.m., Thursday, August 17, 1972.)

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TAX CREDITS FOR NONPUBLIC EDUCATION

HEARINGS
BEFORE THE
COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES
NINETY-SECOND CONGRESS
SECOND SESSION
ON
H.R. 16141 and Other Pending Proposals
RELATING TO AID TO PRIMARY AND SECONDARY EDUCATION
IN THE FORM OF TAX CREDITS AND/OR DEDUCTIONS

AUGUST 14, 15, 16, 17, 18; SEPTEMBER 5, 6, AND 7, 1972

Part 2 of 3 Parts
(August 17, 18; September 5 and 6, 1972)

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TAX CREDITS FOR NONPUBLIC EDUCATION

THURSDAY, AUGUST 17, 1972

House of Representatives,
Committee on Ways and Means,
Washington, D.C.

The committee met at 10 a.m., pursuant to notice, in the committee room, Longworth House Office Building, Hon. Wilbur D. Mills (chairman of the committee) presiding.

The Chairman. The committee will please be in order.

Our first witness this morning is our colleague from the State of New York, the Honorable Thaddeus J. Dulski. We appreciate very much having you with us and you are recognized.

STATEMENT OF HON. THADDEUS J. DULSKI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Dulski. Thank you, Mr. Chairman.

Mr. Chairman, I appreciate your giving me this opportunity to express my views on tax help for families facing the skyrocketing costs of elementary and secondary education.

For the record, Mr. Chairman, I am Thaddeus J. Dulski, Representative for the 41st Congressional District of New York.

On last May 18 I introduced H.R. 15065, now pending before your committee. This bill would amend the Internal Revenue Code of 1954 to allow a credit against the individual income tax for tuition paid for the elementary or secondary education of dependents.

A somewhat similar tax credit proposal is included in H.R. 16141 which our colleague from New York, Mr. Carey, has introduced with cosponsorship by the chairman and other members of the committee.

The bill by Mr. Carey and his cosponsors goes beyond a tax credit and, while your committee is considering this subject, I believe the expanded approach is in order. Indeed, I am today joining you gentlemen as a cosponsor of the concept of H.R. 16141. I will drop the bill in the hopper this afternoon.

My concern has been focused in particular on the endless increases in the cost of grade and high school education for our children in private and parochial schools.

I speak as a parent who has been through the mill, so to speak—and by my own choice. I further speak as a former city legislator who saw this mounting problem years ago and attempted then to pave the way for some relief.

As a parent I have been fortunate to be able financially to send all my children to parochial schools and to pay their tuition. But what of those many thousands of parents who cannot afford the full burden of tuition today and yet would like to exercise their option to send their children to nonpublic schools?

Before I came to Congress, I was a member of the Common Council of the City of Buffalo, N.Y. In our city, unlike many others, the school budget is part of the city budget. It is not handled as a separate tax item. I realized even then the crisis which was developing in the cost of operating the parochial schools. I was aware, too, that without those parochial schools our city budget would literally go through the ceiling.

I arranged a meeting with the head of the local parochial school system to discuss the overall situation and to see what we might do about it. I suggested that, before the situation got completely out of hand, the diocese should apply for school aid from the city and the State.

My logic then, as it is today, is that it is only fair that the people who are helping to hold down the public school budget should receive at least some help in return. We had a full discussion and I offered to prepare such legislation as might be necessary. After consideration, the school officials notified me that the church hierarchy had decided against seeking any school aid at that time.

I said then, and I say again now: If our nonpublic schools in Buffalo were to remain closed in the coming school year, there not only would be fiscal chaos in our city but also our public school system would become a shambles.

Property assessments already are at the full level of taxation. If the public school system had to take on the job of educating pupils now in nonpublic schools, local tax rates would have to be increased tremendously to meet the additional costs.

Actually it is really a humanitarian gesture on the part of the Buffalo Diocese to keep its schools open. Frankly, for my own part, if there isn't a breakthrough on aid for nonpublic schools, then I am prepared to see them closed down so the impact of their contribution to the local budgets can be realized fully.

The old argument on separation of church and state has led to court rulings on Government aid, which to my mind are ridiculous. The courts complain of their heavier caseload because of new legislation, but they ignore the problems they create for themselves by opening Pandora's boxes time after time.

The matter of direct aid for nonpublic schools is not within your committee's province, of course, but it has a direct bearing on the pending legislation.

In order to try to meet rising costs nonpublic school systems are being forced to raise their tuition rates. Tuition rates in Buffalo have been rising steadily and our diocese faces a huge $1.5 million deficit this fall—that's before the school year starts. Nevertheless, the diocese just last week decided to go ahead with the 1972–73 school schedule without change. Incidentally, $1 million of that $1.5 million deficit in the Buffalo area stems from a court injunction barring State aid for so-called "mandated services."

The Buffalo diocese of eight western New York counties has 33 parochial high schools serving 16,000 students, and 178 elementary schools serving about 50,000 students. As I said before, I hate to think what would happen to our local public school system if the diocese and its parishes were forced to close down our parochial schools.

I am not here to make the case for private and parochial schools. What I do seek is a reasonable Federal tax credit for the families who are paying tuition for their children. The Carey bill and my bill call for a tax credit and that is, indeed, the only fair approach.

Our formulas differ. Mine has a higher maximum, but I believe the allowance should be no less than the $200 maximum which is provided by the Carey bill.

Mr. Chairman, the need for tax help for these families, in my opinion, is very real. I am delighted that your committee has called these hearings to explore the ramifications, and I am hopeful that legislation can be enacted promptly to deal with this very pressing educational and social problem.

With your permission, Mr. Chairman, I would like to include as part of my remarks some timely data on the diocese of Buffalo schools which may be of interest in your deliberations.

Again I want to thank you for giving me the opportunity to appear before your committee. I am open to any questions you may have.

The **Chairman**. We thank you, Mr. Dulski, for coming before the committee. We know you have a busy schedule yourself. Without objection the material appended to your statement will be added to the record at this point.

(The material referred to follows:)

Education Data for Diocese of Buffalo, N.Y.

For diocesan high schools, the tuition rate has increased from $150 per pupil per year in 1967 to $400 per pupil per year in 1971. Tuition for private secondary schools in the diocese varies from $400 to $850 per year.

The tuition rate for most parochial grade school students in Buffalo ranges from $60 to $150 a year. A few schools charge only a registration or supply fee ranging from $10 to $25 per pupil.

In the same period, the operational budget for diocesan high schools increased from $3,043,755 in 1967 to $4,706,985 in 1971. The teacher salary schedule for step one, a bachelor's degree, increased from $4,600 in 1967 to $6,400 in 1971.

Diocesan high schools had 13,293 students in 1967, reducing to 9,600 in 1971, when the diocese closed four schools. Private parochial schools, which have their own budgets and are not included in the diocesan budget, had a population of 6,643 in 1967 and 6,224 in 1971. The staff consisted of 660 religious and 444 lay teachers in 1967, and 511 religious and 541 lay teachers in 1971.

As for diocese elementary schools, there were 73,964 students in 1966, and 52,636 in 1971, a 28% decline. There were 1,367 religious and 1,003 lay teachers in 1966, with 915 religious and 1,219 lay teachers in 1971.

On the average, 62% of a parish budget is used to maintain its schools.

Mr. **Conable**. I would like to greet my friend and neighbor from Buffalo and to thank him for the representation he gives to our area. We are proud of his service here.

I would like to ask you, Mr. Chairman, it was not too long ago that that there were more people in private schools in Buffalo than there were in the public school system. I assume because of closings of the private schools that statistic has changed somewhat in recent years.

Is Buffalo still unique in the number of private school students who get their education from parochial schools in particular?

Mr. **Dulski**. No, the number is large but is declining because of the higher tuition. Some years ago the tuition was only $75 for a semester. Now it is up to $250, of which the parish pays $50. The parents pay $200.

Mr. Conable. Has attrition from the private schools been one of the major reasons that the school tax rate has been moving up so rapidly in Buffalo?

Mr. Dulski. I would say so.

Mr. Conable. Thank you, Mr. Chairman.

The Chairman. Mr. Carey.

Mr. Carey. I just want to join my colleague from New York, Mr. Conable, in extending a warm welcome to my classmate who came to Congress with me in 1960 and who has demonstrated through the last 12 years a strong and very dedicated position of support to all aids to education. He has been one of the most eloquent and very effective members in passing many of the education bills that we have enacted in the last 12 years. I am pleased to see him here today as the first of our class to become a chairman of an important committee of the House of Representatives.

It is inspiring that you can take time from your important committee duties to give us the benefit of your experience and recommendations on this bill.

Thank you, Mr. Chairman.

Mr. Dulski. Thank you, Mr. Carey. I just want to correct you. I came in 1958. That is probably the reason I am chairman of a committee.

Mr. Carey. I think you are chairman of a committee because regardless of the seniority system the good always comes to the top.

Mr. Dulski. Thank you.

The Chairman. Again we thank you for a very fine statement.

Mr. Dulski. Thank you.

The Chairman. We are pleased to have with us the Honorable Fernand J. St Germain, our colleague from the State of Rhode Island. You are recognized and you may proceed.

STATEMENT OF HON. FERNAND J. ST GERMAIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF RHODE ISLAND

Mr. St Germain. Mr. Chairman, Congress must protect and encourage the private option without weakening our commitment to public education. H.R. 16141, which I cosponsored, would meet both these goals through its tax credit proposal and its public education equalization plan.

The bill would provide effective constitutional aid to the parents of the 5 million children attending private, nonprofit elementary, and secondary schools across the Nation today. Tax credits would aid those families who are paying taxes to support public schools and at the same time paying tuition to send their children to private or parochial schools

H.R. 16141 would also strengthen our public schools by establishing Federal minimum standards for pupil expenditures. Students in every State would be given an equal opportunity to obtain a quality education. In addition, schools would no longer have to depend on local property taxes as their primary source of revenue. This would keep property taxes from rising so rapidly and it would indirectly benefit all taxpayers, whether or not they have children in school.

I am convinced that this legislation is a practical and farsighted answer to the serious financial and constitutional questions now facing our schools.

Without this tax relief there will be a continuing deterioration of our nonpublic school system and an increasing burden on the public schools. In Rhode Island alone 25 nonpublic schools have closed in the last 5 years. Nationally, 413 schools have closed since 1970.

The main purpose of the tax credit is to lower the cost of education to the students' parents. The benefits in this bill are geared primarily to help lower- and middle-income taxpayers who make up a majority of parents sending their children to nonpublic schools.

This bill would provide substantial tax relief for these parents with tax credits for 100 percent of tuition up to $200. In most cases H.R. 16141 would cover all tuition at the elementary level and more than half the cost of tuition at church-supported high schools.

At the elementary level the majority of parochial school students were charged tuition between $100 and $200 during 1971-72, according to the National Catholic Education Association. High school fees averaged $347 a year for the same period. The NCEA represents approximately 85 percent of the Nation's private, nonprofit elementary and secondary schools.

In my opinion passage of this bill will effectively assist both parents and nonpublic schools while strengthening our whole educational system. I believe history will consider this legislation a landmark in our efforts to achieve an educational system that does in fact offer equal opportunities.

The CHAIRMAN. The committee thanks you for your fine statement. Are there any questions? If not, thank you again.

Our next witness is Dr. A. C. Janney.

Dr. Janney, we welcome you to the committee this morning. We will ask you to identify yourself by giving us your name, address, and the capacity in which you appear.

STATEMENT OF A. C. JANNEY, PRESIDENT, AMERICAN ASSOCIATION OF CHRISTIAN SCHOOLS

Mr. JANNEY. Thank you, Mr. Chairman.

I am A. C. Janney from Miami, Fla. I come to represent the American Association of Christian Schools.

The CHAIRMAN. You are recognized.

Mr. JANNEY. I am delighted to be able to present the views of the American Association of Christian Schools before this distinguished committee. We feel we have a first-line interest in the proposed legislation because of the number of our patrons who will be significantly affected by the outcome of what the Congress does in this area.

I should like to summarize my complete statement, which has been supplied for the record.

The CHAIRMAN. Without objection, your entire statement will appear in the record and you may proceed.

Mr. JANNEY. I would like to offer an addendum at the end of it, appendixes I and II.

The CHAIRMAN. Without objection that will be included also.

Mr. JANNEY. To provide the committee with just a brief background on the AACS I will take just a moment and outline our history and purpose.

The AACS presently is still in the process of organizing itself on a national scale. Previously statewide associations have been formed for the purpose of giving a cohesive voice to what possibly is the most rapidly growing segment of nonpublic education in America today.

The Christian day-school movement, as it has been known in the past, has experienced a phenomenal growth in the past 5 to 10 years. Many evangelical, fundamental church members have become increasingly concerned about the accelerating slide into atheism, materialism and humanism that has taken over the mood of public education in the wake of court decisions removing prayer, Bible reading and in some places even the pledge of allegiance from public classrooms.

In the vacuum created by the removal of these important exercises and fundamentals from our public schools has come a growing student rebelliousness against all authority whether it be civil, parental, educational or spiritual. The natural result is an erosion in the educational process. Where discipline and respect for authority has been artificially removed by judicial fiat the inescapable result is a breakdown in the educational authority and the ability to maintain an atmosphere in which education can take place.

As an aide, Mr. Chairman, I might say that as a pastor I find there are many, many other detrimental results that flow from this in addition to the educational breakdown, but that is not the subject of these hearings.

In my own State of Florida more than 45 schools have banded together in the Florida Association of Christian Schools for the purpose of helping to standardize academic credits, assisting in teacher placement, providing organizational and administrative helps to new schools, as well as assisting government officials in Florida in determining what the needs and wishes of our patrons are in relation to State educational policy.

This same story can be repeated in other States such as Maryland, Michigan, and Texas; as many church-related groups and some non-church-related religious groups have formed their own schools to take over the education of their children. In the main most of these have been formed because the parents have shared the concern that their children are missing an essential part of their education without the spiritual, mental, and physical discipline that has been largely deleted from the public education available to them.

Presently in the national organization there are more than 18 State organizations either already in the organization or in various stages of joining. We estimate that by the end of the year there will be approximately 400 schools in the AACS, representing a total enrollment of around 100,000 students in 23 States.

The question naturally arises, "Why another scholastic organization?" It is quite true, Mr. Chairman, that there is possibly no more fragmented field in America today than education. However, we feel, and obviously the administrators and parents of enough of these schools feel, the need to have a distinctive voice being heard on the American scene today that represents some of the good and positive aspects of what is going on in the educational arena. As the very fact these hearings have been called to consider proposed relief legislation to public and private schools attests, there is much to be troubled about in the educational scene. We think our segment of the education spectrum is a bright and hopeful trend in America and we would like to make our views known to the committee.

As an addendum at this point I would like to suggest it has been mentioned that schools are closing across America, the private schools. In our particular sector we are probably opening one school a day as other schools are being reported to be closing at that rate.

We are more concerned with the problem of too much help than not enough.

We rather fear the hand that Uncle Sam holds out may conceal a club, a club of eventual control. As a general rule our schools have done quite well in providing quality education—measured by any standard—at moderate-to-low cost, with no other aid than that afforded under the existing tax laws.

On the other hand, we have found in several States efforts to bring all private schools under some sort of State control. Wherever we have met this we have stoutly resisted it.

As a matter of opinion, Mr. Chairman, looking at the record of the public administration of schools through the eyes of some who have advocated that approach, we are inclined to agree with Daniel P. Moynihan writing in the New York Times on January 10, 1972, concerning the quality of public school education when he said:

> If anything, they (the facts and conclusions of the Coleman report—J. S. Coleman, Johns Hopkins University 1965–66 of NYC Schools) diminish further the extraordinary weak influence which school "inputs" such as per-pupil expenditure seem to have on educational "outputs." One contributor concluded that given the state of our knowledge the least promising thing we could do in education would be to spend more money on it.

Measured by any reasonable standard, Mr. Chairman, we think that the effort of government to "improve" education, particularly over the last 20 years, is not a very good one. We think parents and the public in general are beginning to realize that and are expressing it at the polls.

Taking aid from a "friendly" elephant—no matter how well-intentioned the aid is—one is likely to get crushed.

Primarily for that reason, Mr. Chairman, we would like to commend you for the approach taken in this legislation to the avenue of assisting the nonpublic education patron. Not the school, but the patron of the school.

If there is one thing everyone in America is in agreement on, it is the proposition that the American taxpayer is loaded down and presently overburdened with the costs of government at every level. This reaction is most likely to be felt at the local level as evidence by the fact that local bond issues to finance schools have been turned down with increasing frequency.

The President's Panel on Nonpublic Education found that since 1965, when 74.7 percent of the bond elections voiced approval; the percentage has dropped in 1971, to only 46 7 percent, and shows every evidence of continuing to drop. There is no question in my mind but that this trend reflects increasing parental disenchantment with the quality of public education and their decreasing willingness to maintain or increase support for that system.

Be that as it may, however, we are concerned with improvement of the situation relating to our patrons' ability to exercise the right of choice in educating their children as they see fit. This is a constitutionally guaranteed right, affirmed most recently in the Supreme Court's decision to allow members of the Amish religion to follow their own educational beliefs even though there may be State legislation standing in the way.

This is a very important matter with us, Mr. Chairman, because it provides the foundational rationale for the very existence of our kind of schooling.

On that point, may I take just a moment to inform members of the committee concerning the philosophy of education followed by member schools of the AACS.

As appendix I to my testimony I shall include a copy of the statement of faith which embodies the essentials of the religious beliefs to which our member schools subscribe. As I say, this includes the beliefs held in common. Some schools and some churches, as the sponsoring organizations, go beyond this in particular theological areas. The purpose of our organization is not to form them into a common mold, but to stand upon common ground together.

There are schools in our association which predate the 1954 *Brown* decision by the Supreme Court. Many more schools were formed long before the United States recently began the massive busing programs enforced by the Justice Department. Our AACS schools are scattered geographically from one end of the United States to the other, and while many of them are in the Southeastern section of our country, there are many in the Midwest, Western, and Northern parts of our Nation also. We have schools with Negroes, Spanish extraction, Italian-American, and other minority students making up a significant portion of the student body and we have schools in which this is not the case. You would find the same situation if you took a cross section of prep schools or military schools or special education schools across the country.

In other words, Mr. Chairman and members of this committee, I am saying that ours is not an organization which was formed in reaction to any Government policy other than the general degradation of spiritual and moral discipline in the public schools which we feel has adversely affected their ability to educate.

Mr. Chairman, I think you and all those in the Congress are to be commended for bringing this matter again before the American people. What is most appreciated is the obvious desire and sincerity you have to do something to relieve the problem and the pressure. Obviously the problems as they exist today have not been largely laid at the door of Congress and that is the reason for my point of caution. It would appear to me that you have enough problems laid at your door as it is. Were I in your place, I would hesitate to embark on yet another tortuous track.

By this I am referring primarily to the problems you are attempting to solve under title I of the proposed bill. We have discussed this part of our testimony at AACS most thoroughly and finally decided to comment even though it is not our primary field. Our comments therefore on title I are from the standpoint of being taxpayers rather than recipients of tax-supported schooling and we shall confine them to the latter part of our presentation.

We have already alluded to our belief that many American taxpayers are becoming increasingly disenchanted with the prospects held out by continuing trends in public education. We will not belabor the point.

Further, we feel the cost of supporting the school system financed by taxation is becoming so prohibitive that taxpayers are beginning to revolt, and we have already taken note of the statistics on that.

Additionally we find that factors such as the increasing militancy of teachers' unions, indeed the very existence of unions in a field claiming professional status contributes to public school dissatisfaction. Government intrusion to break down the concept of neighborhood schools; Government policies in which the "we know what's good for you better than you do" syndrome is preeminent; all these, we feel, serve to bring many parents to the point of being willing to sacrifice to pay for schooling for their children over and above the tax support they are forced to give to public schools.

We think it is high time this double burden being borne by conscientious members of the American society should be lifted and wish to commend the committee for its efforts in this regard.

We fully realize, Mr. Chairman, that proposals similar to this one have been kicking around Congress for more than 20 years. I am informed that more than 150 bills in this general area have been introduced this year with more to come.

Why is the situation different now?

We believe the factors mentioned above are more powerful now plus the essential fairness of the American people is coming to focus on the problem. This will, I believe, make good elements contained in your bill a part of the body of law in the near future.

You have chosen the best available avenue, I believe, in seeking to provide the tax relief at the point where the most pain has been inflicted—in the taxpayer's own pocket.

Under the IRS Code, deductions and credits are intended to establish greater horizontal equity by allowing for special burdens—whether undertaken voluntarily or by circumstances—and to encourage private investment in activities which are deemed in the public good.

Special burdens are exemplified by deductions allowed for medical expenses, casualty losses, State and local taxes, and interest payments. Examples of incentives to invest in societal activities are donations to religious, charitable, and educational institutions as well as investment and retirement credit. These adjustments are not allowed or disallowed on the basis of whether a decision was made voluntarily or imposed accidentally.

For instance: the property taxes one pays, depends upon his choice of a place to live; a medical deduction is allowed for a simple first aid treatment or the choice of extensive repair surgery; a person may borrow to buy a car and deduct the cost of his interest payments, or he may forego the purchase and the deduction.

It is clear that if a justifiable reason exists for a taxpayer to assume a particular obligation, such as the adoption of a child, he is thus entitled to adjustment in his taxes. So it is perfectly logical to assume that tax credits for nonpublic school education should carry with them similar adjustments.

The credits further have the advantages of relieving the burden of millions of taxpayers who do not choose to send their children to private schools. Pupils in private schools require no increases in tax levies.

Two aspects of the bill as proposed trouble me in the light of the foregoing rationale for allowing a credit. First, why is only a portion of the tuition cost allowed as a credit? I understand its function as an incentive, and that perhaps there is some justification for holding down unreasonable charges, but it would seem to me that a far more equitable yardstick to use would be something in the nature of the per pupil expenditures allowed in the public sector.

I know of no school able to do anything like a competent job in educating its pupils—if it is attempting to run on its income and not on endowment or donations—which is charging tuition in the range of the $200 allowance proposed by the bill. The more likely figure would be twice that and we would recommend a credit of up to $500 for tuition be allowed.

Second, why is the allowance only made for nonprofit schools? I have not made an exhaustive study, but in the AACS membership I would suppose that well over 95 percent of the schools are nonprofit organizations. But I fail to see the reasoning that would allow a parent sending his child to one religious school to adjust his tax bill, and disallowing the same adjustment to an equally dedicated parent who is interested in his child's education even though the school may have been set up in some proprietary manner. We allow medical deductions for payments made to nonprofit hospitals or corporately owned nursing homes; we do not disallow a doctor's bill if he happened to make a profit on his practice last year.

We would recommend the term "nonprofit" be stricken from (sec. 201) sec. 42(c)(1) line 8 of the committee print of the bill; as well as lines 17, 18, and 21–23 be deleted.

I realize that it would be presumptuous for me to attempt to explain to this committee of experts the benefits of the credit versus the deduction approach to aiding the taxpayer. For the man in the 70 percent tax bracket a deduction becomes very nearly a credit, but of course there are very few who enjoy that kind of income and if you were to take an income breakdown of the patrons of Christian schools, you would find even fewer. Most of our students come from homes where the extra cost of schooling represents a significant sacrifice, and I note the President's Panel on Nonpublic Education says that "Welfare mothers have been known to cut back on their food to pay nonpublic school tuition." (Final report, page 36.)

We think the credit method or allowing tuition payments to apply directly to the taxpayers' tax liability is obvious in its benefits to lower income groups and commend the committee for this approach.

We know there are powerful figures in the American education scene who would just as soon see every private school closed tomorrow and every child placed in a totally federally administered education program from infancy on. Perhaps that overstates the case a bit, but not by much.

We concede that we will never convince these people who always know what is good for the rest of us and are prepared to "give us the works" even if we would rather do it ourselves. However, we are confident that the history and tradition of the rights of Americans as relates to education will be recognized by Congress.

It goes back to 1785 when the Continental Congress authorized large land grants for school purposes and in 1787 the Constitutional Convention exhorted future generations by saying:

> Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. (Northwest Ordinance.)

We think it is significant that among the benefits to be derived from school education, religion was mentioned first.

The right to this diverse choice in education was clearly set forth in the landmark case of *Pierce* v. *Society of Sisters* (1925) in which the Supreme Court declared unconstitutional an attempt by the State of Oregon to establish a monopoly for their public schools. The Court said:

> The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.

From what many religious people might consider an unlikely source—Mr. Justice Douglas—came these words in 1952:

> We are a religious people whose institutions presuppose a Supreme Being * * * When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions. For then it respects the religious nature of our people and accommodates the public service to their spiritual needs. To hold that it may not would be to find in the Constitution a requirement that the government show a callous indifference to religious groups. That would be preferring those who believe in no religion over those who believe.

We commend the committee for its interest in the continuance of American private education in the oldest of its traditions.

One of the most outstanding items in this proposed legislation we believe is (sec. 201 (sec. 42) (c) (2) (C)) the proposal that the only qualification relating to the school be that it meet the compulsory attendance laws of the State. In our opinion, since the objective of this legislation is to aid nonpublic schools, many of which are religious institutions, the law stays out of the thorny patch of trying to decide who is in compliance on varying grounds and who is not.

We enthusiastically support this concept.

Turning to title I, which of course is considerably more complicated, we move from the school administrator's bailiwick into the role of mere taxpayers. We do not wish to be accused of a dog-in-the-manger attitude, but feel good conscience compels us to question the wisdom of trying "more of the same."

As reason for this questioning I would like to submit as another appendix to my testimony—appendix II—a table derived by the American Enterprise Institute from sources such as the National Education Association, Economic Indicators, and the Economic Report of the President in 1972. From this table one can see that over the past 22 years school enrollment doubled while school revenues, in price-adjusted dollars, multiplied five times.

Expenditures per pupil in constant dollars has gone up two and a half times. Instructional staff increased half again as fast as enrollment while the pupil-teacher ratio was reduced.

And perhaps the most remarkable statistic of all, which should be in the hands of every school board being forced to deal with a militant teachers' union is the fact that teachers' salaries increased twice as fast as wages in the private economy in constant dollars.

When we couple these findings with the "outputs" of the Coleman report as interpreted by a group of scholars headed by Frederick Mosteller and Daniel P. Moynihan, of Harvard, I cannot see that it makes sense to put money into the same type of system in the same way.

It appears from Dr. Coleman's own analysis that learning achievement is governed more by characteristics of the children who attend the school than what the school does. This suggests that educational achievements may depend more on the pupil's background and the interest of their parents in their education than on the amount of money the school spends.

In his message on education reform on March 3, 1970, President Nixon stated:

> The best available evidence indicates that most of the compensatory education programs have not measurably helped poor children catch up.

This, Mr. Chairman and members of the committee, after spending at that time more than $1 billion a year on the education programs under title I of the Elementary and Secondary Education Act.

This year the President spoke in more hopeful terms and proposed that some $2.5 billion be concentrated in "program enrichment" or more narrowly concentrated on "compensatory education for the poor."

However, Newsweek, April 3, 1972, said:

> Despite the expenditure of billions of Federal dollars in the Nation's largest school systems, "compensatory" education—designed to offset the cultural disadvantages of ghetto children—has been widely judged a failure.

Mr. Chairman, as I understand it, you are proposing to pour yet another $2.25 billion each year into this system which has yet to show it can produce results. This, I need not tell you, adds still more to the burden the general Federal taxpayer will ultimately have to bear. It seems to me a far better and more innovative approach should be explored. Our AACS schools are doing what we believe is an equal or superior job at one-third to one-half the cost of public schooling.

We know, of course, that our patrons—if not always our students—are highly motivated toward a better education. Otherwise they would not be willing to strap themselves under the double burden they presently bear of supporting the less efficient tax-supported schools, as well as pay over and above this for their own children's schooling.

Still there might well be ways in which our successes could be studied and either the development of additional schools encouraged—if we are really interested in helping children learn—or at the very least some of the techniques transplanted back into the public system.

I must emphasize, Mr. Chairman, that we do not make these remarks in any sense as experts in public school education, but only from the standpoint of those who help pay for it.

Finally, Mr. Chairman, I would like to note that the AACS had already begun to implement some of the recommendations contained in the final report of the President's Panel on Nonpublic Education even before it was published in April of this year.

For instance, we have already begun a program to:

Clarify our unique identity as a voluntary enterprise by setting forth our particular goals and objectives—recommendation No. 1.

Several years ago we began to increase our association with other schools in our communities—recommendation No. 2.

Practice a policy of broad-based accountability—recommendation No. 3.

Our testimony here today is a part of this effort. Other items contained in the President's panel recommendations are being presently implemented such as—

Operating at full capacity;

Achieving payroll savings through employment of part-time teachers in special fields and paraprofessionals;

Purchasing equipment and supplies through cooperative arrangements;

Forming partnerships with institutions of higher learning; and

Asking for increasing donations to the churches supporting our schools.

We have added innovations of our own such as teacher placement services, State and regional conferences to foster the sharing of ideas and programs, and jointly maintaining a Washington office so we may be better informed on what you are doing and so that we may better inform you of our activities.

We appreciate the opportunity to present the views of the AACS to you in this manner and hope that if there is any way in which we can be of service to the committee, that you will not hesitate to call on us.

Thank you, Mr. Chairman.

(The statement with appendixes follows:)

Statement of Dr. A. C. Janney, President, American Association of Christian Schools

Mr. Chairman, I am delighted to be able to present the views of the American Association of Christian Schools before this distinguished committee. We feel we have a first line interest in the proposed legislation because of the numbers of our patrons who will be significantly affected by the outcome of what the Congress does in this area.

AMERICAN ASSOCIATION OF CHRISTIAN SCHOOLS ORGANIZATION

To provide the committee with just a brief background on the AACS I will take just a moment and outline our history and purpose.

The AACS presently is still in the process of organizing itself on a national scale. Previously statewide associations have been formed for the purpose of giving a cohesive voice to what possibly is the most rapidly growing segment of non-public education in America today. The Christian Day-School movement, as it has been known in the past, has experienced a phenomenal growth in the past five to ten years. Many evangelical, fundamental church members have become increasingly concerned about the accelerating slide into atheism, materialism and humanism that has taken over the mood of public education in the wake of court decisions removing prayer, Bible reading and in some places even the pledge of allegiance from public classrooms.

In the vacuum created by the removal of these important exercises and fundamentals from our public schools has come a growing student rebelliousness against all authority whether it be civil, parental, educational or spiritual. The natural result is an erosion in the educational process. Where discipline and respect for authority has been artificially removed by judicial fiat the inescapable result is a breakdown in the educational authority and the ability to maintain an atmosphere in which education can take place.

As an aside, Mr. Chairman, I might say that as a pastor I find there are many other detrimental results that flow from this in addition to the educational breakdown but that is not the subject of these hearings.

In my own state of Florida more than 45 schools have banded together in the Florida Association of Christian Schools for the purpose of helping to standardize academic credits, assisting in teacher placement, providing organizational and administrative helps to new schools, as well as assisting government officials in Florida in determining what the needs and wishes of our patrons are in relation to state educational policy.

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Presently in the national organization there are more than 18 state organizations either already in the organization or in various stages of joining. We estimate that by the end of the year there will be approximately 400 schools in the AACS representing a total enrollment of around 100,000 students in 23 states.

The question naturally arises, "Why another scholastic organization?" It is quite true, Mr. Chairman, that there is possibly no more fragmented field in America today than education. However, we feel, and obviously the administrators and parents of enough of these schools feel, the need to have a distinctive voice being heard on the American scene today that represents some of the good and positive aspects of what is going on in the educational arena. As the very fact these hearings have been called to consider proposed relief legislation to public and private schools attests, there is much to be troubled about in the educational scene. We think our segment of the education spectrum is a bright and hopeful trend in America and we would like to make our views known to the Committee.

GENERAL AID VIEW

May I say, Mr. Chairman, that I believe I express the view of an overwhelming majority of our patrons and members when I say that we are more concerned with the problem of too much help than not enough.

We rather fear the hand that Uncle Sam holds out may conceal a club, a club of eventual control. As a general rule our schools have done quite well in providing quality education—measured by any standard—at moderate-to-low cost, with no other aid than that afforded under the existing tax laws.

On the other hand we have found in several states, efforts to bring all private schools under some sort of state control. Wherever we have met this we have stoutly resisted it.

As a matter of opinion, Mr. Chairman, looking at the record of the public administration of schools through the eyes of some who have advocated that approach, we are inclined to agree with Daniel P. Moynihan writing in the *New York Times* on January 10, 1972 concerning the quality of public school education when he said:

"If anything, they (the facts and conclusions of the Coleman Report—J. S. Coleman, Johns Hopkins University 1965–66 of NYC Schools) diminish further the extraordinary weak influence which school 'inputs' such as per pupil expenditure seem to have on educational 'outputs.' One contrbiutor concluded that given the state of our knowledge the least promising thing we could do in education would be to spend more money on it."

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Primarily for that reason, Mr. Chairman, we would like to commend you for the approach taken in this legislation to the avenue of assisting the non-public education patron.

AID TO THE TAXPAYER

If there is one thing everyone in America is in agreement on it is the proposition that the American taxpayer is loaded down and presently overburdened with the costs of government at every level. This reaction is most likely to be felt at the local level as evidenced by the fact that local bond issues to finance schools have been turned down with increasing frequency. The President's Panel on Non-public Education found that since 1965 when 74.7 percent of the bond elections voiced approval; the percentage has dropped in 1971 to only 46.7 percent, and shows every evidence of continuing to drop. There is no question in my mind, but that this trend reflects increasing parental disenchantment with the quality of public education and their decreasing willingness to maintain or increase support for that system.

Be that as it may, however, we are concerned with improvement of the situation relating to our patrons' ability to exercise the right of choice in educating their children as they see fit. This is a Constitutionally guaranteed right, affirmed most recently in the Supreme Court's decision to allow members of the Amish religion to follow their own educational beliefs even though there may be State legislation standing in the way.

This is a very important matter with us, Mr. Chairman, because it provides the foundational rationale for the very existence of our kind of schooling.

AACS SCHOOL POLICIES

On that point, may I take just a moment to inform members of the Committee concerning the philosophy of education followed by member schools of the AACS.

As an appendix to my testimony I shall include a copy of the statement of faith which embodies the essentials of the religious beliefs to which our member schools subscribe. As I say, this includes the beliefs held in *common*. Some schools and some churches, as the sponsoring organizations, go beyond this in particular theological areas. The purpose of our organization is not to form them into a common mold, but to stand upon common ground together.

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In other words, Mr. Chairman and members of this committee, I am saying that ours is not an organization which was formed in reaction to any government policy other than the general degradation of spiritual and moral discipline in the public schools which we feel has adversely affected their ability to educate.

H.R. 16141 OVERVIEW

Mr. Chairman, I think you and all those in the Clngress are to be commended for bringing this matter again before the American people. What is most appreciated, is the obvious desire and sincerity you have to do *something* to relieve the problem and the pressure. Obviously the problems as they exist today have not been largely laid at the door of Congress and that is the reason for my point of caution. It would appear to me that you have enough problems laid at your door as it is. Were I in your place, I would hesitate to embark on yet another tortuous track.

By this I am referring primarily to the problems you are attempting to solve under Title I of the proposed bill. We have discussed this part of our testimony at AACS most thoroughly and finally decided to comment even though it is not our primary field. Our comments therefore on Title I are from the standpoint of being taxpayers rather than recipients of tax-supported schooling and we shall confine them to the latter part of our presentation.

TITLE II RATIONALE

We have already alluded to our belief that many American taxpayers are becoming increasingly disenchanted with the prospects held out by continuing trends in public education. We will not belabor the point.

Further we feel the cost of supporting the school system financed by taxation is becoming so prohibitive that taxpayers are beginning to revolt, and we have already taken note of the statistics on that.

Additionally we find that factors such as the increasing militancy of teachers' unions, indeed the very existence of unions in a field claiming professional status, contributes to public school dissatisfaction. Government intrusion to break down the concept of neighborhood schools; Government policies in which the "we-know-what's-good-for-you-better-than-you-do" syndrome is preeminent; all these, we feel, serve to bring many parents to the point of being willing to sacrifice to pay for schooling for their children over and above the tax support they are forced to give to public schools.

We think it is high time this double burden being born by conscientious members of the American society should be lifted and wish to commend the committee for its efforts in this regard.

We fully realize, Mr. Chairman, that proposals similar to this one have been kicking around Congress for more than 20 years. I am informed that more than 50 bills in this general area have been introduced this year with more to come.

Why is the situation different now?

We believe the factors mentioned above are more powerful now plus the essential fairness of the American people is coming to fucus on the problem. This will, I believe, make good elements contained in your bill a part of the body of law in the near future.

TAX CREDIT RATIONALE

You have chosen the best available avenue, I believe, in seeking to provide the tax relief at the point where the most pain has been inflicted—in the taxpayers own pocket.

Under the IRS Code, deductions and credits are intended to establish greater horizontal equity by allowing for special burdens—whether undertaken voluntarily or by circumstances—and to encourage private investment in activities which are deemed in the public good.

Special burdens are exemplified by deductions allowed for medical expenses, casualty losses, state and local taxes and interest payments. Examples of incentives to invest in societal activities are donations to religious, charitable and educational institutions as well as investment and retirement credit. These adjustments are not allowed or disallowed on the basis of whether a decision was made voluntarily or imposed accidentally.

For instance: the property taxes one pays, depends upon his choice of a place to live; a medical deduction is allowed for a simple first aid treatment or the choice of extensive repair surgery; a person may borrow to buy a car and deduct the cost of his interest payments, or he may forgo the purchases and the deduction.

It is clear that if a justifiable reason exists for a taxpayer to assume a particular obligation, such as the adoption of a child, he is thus entitled to adjustment in his taxes. So it is perfectly logical to assume that tax credits for non-public school education should carry with them similar adjustments.

The credits further have the advantages of relieving the burden of millions of taxpayers who do not choose to send their children to private schools. Pupils in private schools require no increase in tax levies.

AMOUNT OF CREDIT

Two aspects of the bill as proposed trouble me in the light of the foregoing rationale for allowing a credit. First—Why is only a portion of the tuition cost allowed as a credit? I understand its function as an incentive, and that perhaps there is some justification for holding down unreasonable charges, but it would seem to me that a far more equitable yardstick to use would be something in the nature of the per-pupil expenditures allowed in the public sector. I know of no school able to do anything like a competent job in educating its pupils—if it is attempting to run on its income and not on endowment or donations—which is charging tuition in the range of the $200 allowance proposed by the bill. The more likely figure would be twice that and we would recommend a credit of up to $500 for tuition be allowed.

NON-PROFIT ASPECTS

Second—Why is the allowance only made for non-profit schools? I have not made an exhaustive study, but in the AACS membership I would suppose that well over 95 percent of the schools are non-profit organizations. But I fail to see the reasoning that would allow a parent sending his child to one religious school to adjust his tax bill, and disallowing the same adjustment to an equally dedicated parent who is interested in his child's education even though the school may have been set up in some proprietary manner. We allow medical deductions for payments made to non-profit hospitals or corporately owned nursing homes; we do not disallow a doctor's bill if he happened to make a profit on his practice last year.

We would recommend the term "non-profit" be stricken from (Sec. 201) Sec. 42 (c)(1) line 8 of the committee print of the bill as well as Lines 17, 18 and 21–23 be deleted.

LOW-INCOME BENEFITS

I realize that it would be presumptuous for me to attempt to explain to this committee of experts the benefits of the credit *versus* the deduction approach to aiding the taxpayer. For the man in the 70 percent tax bracket a deduction becomes very nearly a credit, but of course there are very few who enjoy that kind of income and if you were to take an income breakdown of the patrons of Christian schools you would find even fewer. Most of our students come from homes where the extra cost of schooling represents a significant sacrifice, and I note the President's Panel on Non-Public Education says that "Welfare mothers have been known to cut back on their food to pay non-public school tuition." (Final report pg. 36). We think the credit method or allowing tuition payments to apply directly to the taxpayers tax liability is obvious in its benefits to lower income groups and commend the committee for this approach.

NEED FOR DIVERSITY

We know there are powerful figures in the American Education scene who would just as soon see every private school closed tomorrow and every child placed in a totally Federally Administered Education program from infancy on. Perhaps that overstates the case a bit, but not by much. We concede that we will never convince these people who always know what is good for the rest of us and are prepared to "give us the works" even if we would rather do it ourselves; however, we are confident that the history and tradition of the rights of Americans as relates to education will be recognized by Congress. It goes back to 1785 when the Continental Congress authorized large land grants for school purposes and in 1787 the Constitutional Convention exhorted future generations by saying:

"Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." (Northwest Ordinance.)

We think it is significant that among the benefits to be derived from school education, religion was mentioned first.

The right to this diverse choice in education was clearly set forth in the landmark case of *Pierce v. Society of Sisters* (1925) in which the Supreme Court declared unconstitutional an attempt by the State of Oregon to establish a monopoly for their public schools. The Court said, "The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."

From what many religious people might consider an unlikely source—Mr. Justice Douglas—came these words in 1952:

"We are a religious people whose institutions presuppose a Supreme Being . . . When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions. For then it respects the religious nature of our people and accommodates the public service to their spiritual needs. To hold that it may not would be to find in the Constitution a requirement that the government show a callous indifference to religious groups. *That would be preferring those who believe in no religion over those who believe.*" (Italic added.)

We commend the Committee for its interest in the continuance of American private education in the oldest of its traditions.

COMPULSORY EDUCATION QUALIFICATIONS

One of the most outstanding items in this proposed legislation we believe is [Sec. 201 (Sec. 42)(c)(2)(C)] the proposal that the only qualification relating to the school be that it meet the compulsory attendance laws of the state. In our opinion, since the objective of this legislation is to aid nonpublic schools, many of which are religious institutions, the law stays out of the thorny path of trying to decide who is in compliance on varying grounds and who is not.

We enthusiastically support this concept.

TITLE I

Turning to Title I, which, of course, is considerably more complicated, we move from the school administrator's baliwick into the role of mere taxpayers.

We do not wish to be accused of a dog-in-the-manger attitude, but feel good conscience compells us to question the wisdon of trying "more of the same."

As a reason for this questioning I would like to submit as another appendix to my testimony a table derived by the American Enterprise Institute from Sources such as the National Education Association, Economic Indicators and the Economic Report of the President in 1972.

From this table one can see that over the past 22 years school enrollment doubled while school revenues, in *price adjusted dollars* multiplied five times.

Expenditures per pupil in *constant dollars* has gone up two and a half times.

Instructional staff increased half again as fast as enrollment while the pupil teacher ratio was reduced.

And perhaps the most remarkable statistic of all, which should be in the hands of every school board being forced to deal with a militant teacher's union is the fact that teachers salaries increased twice as fast as wages in the private economy in *constant dollars*.

When we couple these findings with the "outputs" of the Coleman Report as interpreted by a group of scholars headed by Frederick Mosteller and Daniel P. Moynihan of Harvard, I cannot see that it makes sense to put money into the same type of system in the same way.

It appears from Dr. Coleman's own analysis that learning achievement is governed more by characteristics of the children who attend the school than what the school does. This suggests that educational achievements may depend more on the pupil's background and the interest of their parents in their education than on the amount of money the school spends.

In his message on Education Reform on March 3, 1970 President Nixon stated: "The best available evidence indicates that most of the compensatory education programs have not measurably helped poor children catch up."

This, Mr. Chairman and members of the Committee, after spending at that time more than $1 billion a year on the education programs under Title I of the Elementary and Secondary Education Act.

This year the President spoke in more hopeful terms and proposed that some $2.5 billion be concentrated in "program enrichment" or more narrowly concentrated on "compensatory education for the poor."

However, ***Newsweek*** (April 3, 1972) said:

"Despite the expenditure of billions of federal dollars in the nation's largest school systems, 'compensatory' education—designed to offset the cultural disadvantages of ghetto children—has been widely judged a failure."

Mr. Chairman, as I understand it you are proposing to pour yet another $2.25 billion each year into this system which has yet to show it can produce results. This, I need not tell you, adds still more to the burden the general federal taxpayer will ultimately have to bear. It seems to me a far better more innovative approach should be explored. Our AACS schools are doing what we believe is an equal or superior job at one third to one half the cost of public schooling.

We know, of course, that our patrons—if not always our students—are highly motivated toward a better education. Otherwise they would not be willing to strap themselves under the double burden they presently bear of supporting the less efficient tax-supported schools, as well as pay over and above this for their own children's schooling.

Still there might well be ways in which our successes could be studied and either the development of additional schools encouraged—if we are really interested in helping children learn—or at the very least some of the techniques transplanted back into the public system.

I must emphasize, Mr. Chairman, that we do not make these remarks in any sense as experts in public school education, but only from the standpoint of those who help pay for it.

PRESIDENT'S PANEL'S RECOMMENDATIONS

Finally, Mr. Chairman, I would like to note that the AACS had already begun to implement some of the recommendations contained in the final report of the President's Panel on Non-Public Education before it was published in April of this year.

For instance we have already begun a program to:

Clarify our unique identity as a voluntary enterprise by setting forth our particular goals and objectives.—Recommendation #1

Several years ago we began to increase our association with other schools in our communities.—Recommendation #2

Practice a policy of broad-based accountability.—Recommendation #3

Our testimony here today is a part of this effort.

Other items contained in the President's panel recommendations are being presently implemented such as:

operating at full capacity;

achieving payroll savings through employment of part time teachers in special fields and paraprofessionals;

purchasing equipment and supplies through cooperative arrangements;

forming partnerships with institutions of higher learning; and

asking for increasing donations to the churches supporting our schools.

We have added innovations of our own such as teacher placement services, state and regional conferences to foster the sharing of ideas and programs, and jointly maintaining a Washington office so we may be better informed on what you are doing and so that we may better inform you of our activities.

We appreciate the opportunity to present the views of the AACS to you in this manner and hope that if there is any way in which we can be of service to the Committee that you will not hesitate to call on us.

Thank you.

Appendix I

STATEMENT OF FAITH OF THE AMERICAN ASSOCIATION OF CHRISTIAN SCHOOLS

We believe that the Bible both the Old and New Testaments, was given by inspiration of God, and is our only rule in matters of faith and practice. We believe in creation, not evolution; that man was created by the direct act of God and in the image of God. We believe that Adam and Eve, in yielding to the temptation of Satan, became fallen creatures. We believe that all men are born in sin. We believe in the Incarnation, the Virgin Birth, and the Deity of our Lord and Saviour, Jesus Christ. We believe in His vicarious and substitutional Atonement for the sins of mankind by the shedding of His blood on the cross. We believe in the resurrection of His body from the tomb, His ascension to Heaven, and that He is now our Advocate. We believe that He is personally coming again. We believe in His power to save men from sin. We believe in the necessity of the New Birth, and that this New Birth is through the regeneration by the Holy Spirit. We believe that salvation is by grace through faith in the atoning blood of our Lord and Saviour, Jesus Christ.

We believe that this creed is a sufficient basis for Christian fellowship and that all born-again men and women who sincerely accept this creed can, and should, live together in peace, and that it is their Christian duty to promote harmony among the members of the Body of Christ, and also to work together to get the Gospel to as many people as possible in the shortest time possible.

Appendix II

BASIC DATA ON PUBLIC SCHOOL FINANCE, 1950 AND 1972

	School years		Percent increase or decrease
	1949-50	1971-72	
Enrollment	25,185,436	48,204,104	+91.0
Instructional staff	962,174	2,328,285	+142.0
Classroom teachers	913,671	2,089,623	+129.0
Administrators, librarians, counselors, etc	48,503	238,662	+392.0
Revenue receipts (millions)	$5,437	$46,645	+758.0
Expenditures (millions)	$5,802	$46,804	+707.0
Gross national product (billions) (1949 and 1971)	$256.5	$1,046.8	+308.0
Consumer Price Index (1967=100) (1949 and 1971)	71.4	121.3	+70.0
Revenue receipts in 1971 dollars	$9,243	$46,645	+405.0
Expenditures in 1971 dollars	$9,863	$46,804	+375.0
School revenues as a percent of GNP	2.1	4.5	
Current expenditure per pupil in ADA	$210.34	$929.00	+342.0
Current expenditure per pupil in ADA in 1971 dollars	$357.58	$929.00	+160.0
Ratios:			
Instructional staff, pupils	1:26.2	1:20.7	−5.5
Classroom teachers, pupils	1:27.6	1:23.1	−4.5
Administrators, etc., teachers	1:18.8	1:8.8	−10.0
Administrators, etc., pupils	1:519	1:202	−317.0
Teachers' average annual salary	$3,010	$10,146	+237.0
Average weekly earnings in the nonagricultural private economy (1949 and 1971)	$50.24	$126.91	+153.0
Teachers' average salary in 1971 dollars (annual)	$5,117	$10,146	+98.0
Average weekly earnings in the nonagricultural private economy in 1971 dollars (1949 and 1971)	$85.41	$126.91	+49.0

Source: National Education Association, "Estimates of School Statistics, 1971-72, 1959-60," "Economic Indicators," February 1972: and "Economic Report of the President," January 1972.

The CHAIRMAN. Thank you, Dr. Janney, for your statement. Mr. Corman.

Mr. CORMAN. Dr. Janney, do you have any gross figures on how much is spent in nonpublic elementary and secondary education in this country?

Mr. JANNEY. No, sir, I do not.

Mr. CORMAN. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Schneebeli.

Mr. SCHNEEBELI. Dr. Janney, did I understand you correctly to say that your schools are increasing at the rate of one a day?

Mr. JANNEY. Yes, sir. For instance, in the State of Florida, according to the Board of Public Instruction there in Tallahassee there are over a thousand private schools in the State of Florida. I recently made a trip to Texas and I found out there are over 200 private Christian schools just in the Dallas-Fort Worth area. According to a reasonable report that I received from some people who are associated with the private school movement, there in the Dallas-Fort Worth area there are over 1,500 private schools in the State of Texas.

Mr. SCHNEEBELI. This trend then takes people out of public schools, does it not?

Mr. JANNEY. Yes, sir, it does.

Mr. SCHNEEBELI. The argument we get from a lot of the proponents of this legislation is that the trend is the closing of the private schools, creating a burden on the public school system. What you say is just the opposite.

Mr. JANNEY. Yes, sir, I recognize that it is. You see, for a long time it has been conceived in the eyes of most people that the organized denominations, i.e., the Catholic Church, the Lutheran Church, Episcopal Church, and so forth were the only ones involved in the private sector of education or nonpublic education. In the State of Florida the Roman Catholic schools have 85,000 students and in the Florida Association of Christian Schools we have about 45,000 students.

We have simply been quietly going about our business because we have not wanted any of the State's money, we have not wanted any of the Federal Government's money. We have not wanted their assistance. We have not wanted their controls. We are simply part of the private enterprise segment of our society.

We have become increasingly disenchanted with the prospects held out by continuing trends in public education, hence the American Association.

Mr. SCHNEEBELI. Can you give me any idea whether your rate of increasing pupils per year is as great as the decrease in the private school sector?

Mr. JANNEY. I do not have the statistics, but I would be happy to do some research in this area and provide that for you.

Mr. SCHNEEBELI. If you can, give that to us. One of the complaints we get is that as these private schools, particularly in the Northeast, are closing, it throws a burden on the public system. What you are saying is the opposite.

Mr. JANNEY. We do have differing rates of growth in different sectors of the country. A great number of the schools I am particularly associated with, while some of them are in the Northeast, more are in the Southeast. Some of them are newer. Some of our schools are 40, 50, 60 years old. They are not all just Johnny-come-latelies. As the problems—the Supreme Court decisions on prayer in the schools and the religious aspects of it, many, have formed their own schools. For instance, in my own city, in the city of Miami, I can show you where there are 15 Baptist churches that will be starting schools in September. Of those 15 Baptist churches that are starting schools, I could establish some information for you as to the areas where this is occurring. Also, because of my good friendship and relationship with the people who are in the parochial school business there—the Catholic schools and so forth—we can establish some areas of information that they would be familiar with.

Mr. Schneebeli. If you could give us some figures, it would be quite interesting because we are led to believe the trend is the other way.

Mr. Janney. I will be happy to do so.

(The information referred to follows:)

RELIGIOUS SCHOOL OPENING AND CLOSING IN THE MIAMI AREA

Mr. Chairman, I am happy to supply the following information to your Committee for the record.

In researching the situation I described to the Comittee during the hearings I contacted a statewide representative for the Southern Baptist Association in Florida and he gave me the following information:

"In Dade County, Florida (Miami) there are about 75 churches and 30 missions of this denomination. Of these 40–45 have schools and kindergartens, additionally there are 26–30 schools which encompass elementary and some secondary education. More than half of these have opened within the last year."

"In the entire state of Florida there are about 1400 Southern Baptist Churches, missions, etc., and four out of five, I would estimate, have some kind of schooling. A great many were opened within the last year."

"We are currently in the process of mailing a questionnaire to all our schools in Florida to assemble further precise details of how many schools we have, what grades they encompass, and how many students are enrolled."

On the other side of the picture, I contacted a member of the school records staff of the Roman Catholic Archdiocese of Miami as well as discussing the general situation among Catholic schools with two of their statewide representatives. The following is a summation of the information which they provided:

> Dade county, Florida reported no new Catholic schools opened within the past year and one was closed.
>
> Broward County (adjacent to the Miami area) is reported to have closed two.
>
> The State of Florida does not record the opening of any new Catholic Schools last year and the statewide representative, while he could not at this time give me total enrollment figures for Florida, said that enrollment in the last school year had declined by about 4000 students and they were expecting this trend to continue.

Unfortunately, Mr. Chairman, the time I picked to try and gather this research was not the most propitious for talking to school administrators, but I believe you can see the general trend of which I spoke in the hearings is born out by these somewhat limited facts.

I would not attempt to speak for the Catholic schools as to what they are finding is the reason for declining enrollment. I can well imagine that the double burden of pay for a tax supported system as well as their own religious system is a considerable factor, as it is with the patrons of our schools. To that end I am sure the legislation being considered by this Committee would offer some measure of consitutional relief to the patrons of both kinds of schools.

Speaking for those schools with which I do have some connection and knowledge, I believe I can reiterate the point already made in my prepared statement; namely, that parents are becoming increasingly dissatisfied with the quality of education being offered in the public schools, the general air that reflects a lack of authority and a concomitant erosion of the educational ability of the public schools; and the increasing tendency for teachers in the public schools, who are supposed to be professionals, to demean their position of respect by illegal strikes, picketting and other acts which lower their esteem to the point where students are no longer willing to try and learn from them.

I appreciate this opportunity to present these additional facts and observations to the Committee for the Record. If we can be of any further service please do not hesitate to call upon us.

The CHAIRMAN. Are there any other questions? If not, thank you, Dr. Janney.

Mr. JANNEY. Thank you, sir.

The CHAIRMAN. Our next witness is Dr. John W. Baker. Dr. Baker, we are pleased to have you with us this morning. If you will identify yourself for the record by giving us your name, address, and capacity in which you appear, you will be recognized.

STATEMENT OF JOHN W. BAKER, ACTING EXECUTIVE DIRECTOR, BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS

Mr. BAKER. I am John Baker. I am the acting executive director of the Baptist Joint Committee on Public Affairs in Washington, D.C. We, as a committee represent the eight cooperating Baptist Conventions and Conferences in the United States. They are: The American Baptist Convention; Baptist General Conference; National Baptist Convention of America; National Baptist Convention U.S.A. Inc.; North American Baptist General Conference; Progressive National Baptist Convention Inc.; Seventh Day Baptist General Conference; and Southern Baptist Convention.

This totals some 22 or 23 million people that we represent but because the nature of Baptist policy and the way the churches do function we do not purport to speak for all Baptists. However the committee is authorized to represent official denominational positions to Government. The staff is also authorized to study governmental actions and proposals and interpret these to Government and to the denominations in the light of the basic principles of freedom.

In today's hearings on H.R. 16141 we will not attempt to comment on title I of the bill but will confine our comments to title II.

Title II allows a tax credit for tuition paid to any private nonprofit elementary or secondary school. This tax credit would be allowed to cover actual tuition costs up to a maximum of $200 per dependent.

We voice our opposition to title II of H.R. 16141 because it is contrary to the traditional American principle of religious liberty and the constitutional separation of church and state and because it would be an unwise and divisive public policy. These two bases of objection are discussed below.

A quick search of the records will show that this organization has not been obstructionist in dealing with education matters. Mr. Carey, I am sure, remembers that we worked with concerned religious groups to develop some of the language which made the Elementary and Secondary Education Act of 1965 acceptable to most of the church groups involved. However, the tax credits provided for in this bill are so contrary to the constitutional principle of separation of church and state and to our tradition of religious liberty that we must object strongly to title II of H.R. 16141.

What must not be lost sight of is that, though the tax credits would be provided for parents or guardians of students in private nonprofit schools, the purpose of the act is to aid schools rather than parents and to give substantial governmental aid to private school systems. The title of the committee print indicates that the subject of the bill is Aid to Primary and Secondary Education in the Form of Tax Credits and/or Deductions. More than 90 percent of the schools to be aided are operated by churches to provide religious education and religiously impregnated secular subjects to students who usually are members of the religious group sponsoring the school.

The National Catholic Register for August 6, 1972, illustrates this point in an article "Why Catholic Schools?" by Father Christopher O'Toole, C.S.C. In this article Father O'Toole states:

> The purpose of the parochial school is to permeate with the Faith and the spirit of the Gospels the total educative process. In a parochial school the teaching of religion, for example, is not simply just another subject to be learned and which is not taught in public schools. No, the entire curriculim is to move forward in an atmosphere of faith in order to produce a pupil who knows, at least in an elementary way, how to relate all knowledge to its ultimate Source—God Himself.

Such a statement adequately describes the approach of other religiously oriented schools also. If they did not differ in this way there would be no reason for the support—a good deal of the highly sacrificial support—churches now give to their schools.

We do not object to this kind of education. On the contrary, we encourage it and hope that the various churches can continue to offer it for their members. We do disagree, however, with the proposition that these schools should be supported in part by public funds. There can be no escape from the conclusion that such infusion of public funds into religious education benefits the sponsoring church and that the net result is that the taxpayers generally are forced to join in subsidizing religion. It is our position that this is not the proper function of government in the American system.

In effect, such public aid to religious education would require that taxpayers of all religions or of no religion make up the deficit in Federal income lost through these tax credits by paying higher taxes or else they would be deprived of existing public services if the taxes were not raised and the spending level retained. If additional tax revenues were not raised, it is entirely possible that current public educational programs would have to be cut back, thus taking public education funds to help finance private education.

Such elements of compulsory religion would seem to be contrary to the establishment clause of the first amendment. Aid to religious education in the form of public funds quite possibly would run contrary to the doctrine of excessive entanglement enunciated by the U.S. Supreme Court in *Walz* v. *Tax Commission*, 397 U.S. 664, 1970. It would surely be contrary to the principle of religious liberty.

The free exercise of religion clause of the first amendment means simply that neither Congress nor the States, with some exceptions, may interfere in individual or corporate religious practices. It does not mean that the State must furnish the means through which religious practices may occur.

For example, some religious groups may feel a strong need for church houses or cathedrals in order to exercise their religion freely. Few in America would assert that the Government should build those edifices for those religious groups. The first amendment begins negatively: "Congress shall make no law * * *." The statement is not permissive and does not allow Congress to provide the wherewithal for religious groups to carry out their religious mission.

We also object to title II of H.R. 16141 on the grounds that it contitutes an unwise public policy fiscally, educationally, and socially.

The proposed tax credits are inequitable in several ways. They are regressive in that they benefit the person with an income substantial enough to pay income taxes amounting to several hundred dollars and are of minimal or no benefit to those with smaller incomes. Those persons of limited means would have to bear heavier burdens to send their children to private or parochial schools because the legal limit on tax credits will tend to become the minimum charged for tuition to those schools.

A decision to grant tax relief in one type of tax in order to compensate for the tax burden of a dissimilar type of tax is one which leads to inequities. Title II allows credits on personal income taxes, and yet most of the support for the public schools comes from property taxes.

A hypothetical case illustrates the problem. Two identical houses in a development pay the same property taxes. The owners of one house pay, let us assume, $800 per year in school taxes on the property whether they send children to school or not. The owners of the other house have five children that they choose to send to the local nonpublic school. They still pay the property taxes of $800 on their home but are eligible to receive up to $1,000 in tax credits for sending their children to a private or parochial school. The fact that income taxes have a fairly rapid rate of progression would make the advantage to the one who sent his children to nonpublic schools even greater than the $200 differential.

Tax credits also provide an inequitable tax loophole for a special group of taxpayers. There are arguments for such programs even as there are rationalizations to explain depletion allowances, tax-free income from municipal bonds, et cetera. But the arguments do not usually consider all of the facts.

It is correct that property owners who make the deliberate choice to send their children to a nonpublic school still pay taxes to support the public schools. But so do those property owners who are single or those who are couples without children. It seems unwise to provide tax benefits for those people who feel that either the public schools are not the type of schools they want for their children or that they do not provide the religious experience they want for their children.

In addition, most property owners also pay Federal income tax. Unless there is a reduction in existing public services—which could be harmful to all of the people—an income tax increase would be necessary to cover the loss of more than three-quarters of a billion dollars absorbed by tax credits. This would spread the cost of sending children to nonpublic schools to all people who pay Federal income taxes.

The ill effects of tax credits are numerous. They would tend to weaken the public school system by encouraging the establishment of all types of nonpublic schools which relegate their rejects to the public schools. This in turn would promote religious, ethnic, political, and racial separateness which could lead to internal strife and tensions.

It is not a parade of imaginary horribles to forecast that there would be schools catering to the divisive elements through the establishment of Black Panther, John Birch, Minuteman, SDS, and WASP schools, to name a few. And the rules which provide for schools to be open to all would be of no real value because whichever group controls the curriculum and teaching staff will automatically control the makeup of the student body. Few black children would stay long in a school which proclaimed white supremacy. Few Polish Catholic youngsters would be sent to a Black Panther school. Other unlikely combinations can be easily devised.

The democratic and melting pot attributes which the public school system fosters stand to suffer in the struggle and, if this happens, the Nation will be the loser. Thank you, Mr. Chairman.

The **Chairman**. Dr. Baker, we thank you for your very fine statement. Let me ask you a question if I may. Does your argument, that a tax credit of up to $200 for tuition to send a child to a religious school violate the principle of separation of church and state, also apply to the existing provisions of law that allow me to deduct $100 or so that I might give each month or each year to my church?

Mr. **Baker**. You are asking me a question which I think is a pretty tough nut.

The **Chairman**. I think it is, Because if we follow your argument, I think the provision of law that does allow me that deduction would also be in violation of the principle of separation of church and state. Because as taxpayers all of us together deduct more than a billion dollars a year that go to churches. Now, that billion dollars represents a loss of public money, and I would think that the same argument would apply there.

Mr. **Baker**. May I answer for me and not for my organization, because we have not taken a position.

The **Chairman**. Yes. I am merely trying to get some help on it because I am worried by your argument.

Mr. **Baker**. I personally am much in sympathy with the idea that we need a serious look at the entire realm of deductions and exemptions, and I think that I would have personally—not organizationally but personally—have few quarrels with the Mills-Mansfield bill as it stands. This is a personal thing. I am sure many of the churches which support the joint committee would not agree with me on it.

I think there are probably many people in the churches who feel as I do on this issue.

The **Chairman**. I was interested in your response because in 1957, I believe, the Ways and Means Committee or a subcommittee thereof conducted a very extensive hearing into all of the so-called loopholes or preferences, including all the deductions to which the taxpayer was entitled, including business deductions. We had a witness who was a representative of some group of churches—I have forgotten the name of the organization. I have even forgotten his name.

The income tax rate then was 91 percent. He argued against our reducing any of the tax rates because he contended the higher the tax rate, the more likely the individual would be to make a greater contribution to his church; the lower the tax rate, the less likely he would be to make a contribution.

Mr. Mason of Illinois was then on the committee. He actually jumped out of his chair at that response to this question. That witness, who had identified himself as a minister, was asked whether he thought that Mr. Mason's legal right to deduct a contribution to his church motivated him to make a gift in the amount. The witness said that it did, but Mr. Mason said, "It does not, I am a Christian."

Mr. Baker. I would hope that church members would contribute because they wanted to. Incidentally, I am not a minister; I am a college professor.

The Chairman. I know your background.

Mr. Baker. I would hope that the church members would contribute without reference to a tax deduction. No matter what the committee does ultimately, tax deductions should not be a way to encourage or discourage church members in their gifts.

The Chairman. Even though the Congress has allowed, over the years, a deduction for church contributions and though it might involve to some degree a violation of the principle of the separation of church and state, you are suggesting we not use it as a precedent for further extension?

Mr. Baker. Speaking again, strictly for myself, that is correct.

The Chairman. Mr. Byrnes.

Mr. Byrnes. The same rationale that is involved in the discussion you just had with the chairman is also involved in the deductibility of contributions to nonpublic educational facilities. We permit a person to make a contribution for educational purposes.

Mr. Baker. As a college professor in a church-related school for 11 years before I came to Washington, this may be my one special pleading. Colleges do depend on large gifts. Churches normally depend on small contributions. Colleges depend very strongly on larger gifts. I am not making the case for the colleges; they can speak for themselves. I do think that we need to examine our rationale very carefully on tax exemptions and tax deductions.

Mr. Byrnes. In 1969, we did a little tightening up in the field of contributions. I think the greatest scream over what we did in 1969 came from colleges that are nonpublic, depending on various gifts.

Mr. Baker. I helped work on that, too, in the conference committee.

Mr. Byrnes. Those who argue that the tax credit is so fundamentally wrong have a problem when they try to rationalize their attitude toward contributions in the area of education.

Mr. Baker. That is a difficult thing. I don't think we are at all clear. I agree that Baptists, church people, educators, and so forth are not always consistent.

Mr. Byrnes. Neither are Congressmen, so you don't have to feel too badly about that.

The. Chairman. Dr. Baker, there is one other item that was included in the so-called Mills-Mansfield bill, and that was the elimination of the section of the law—I think it is section 107 of the Internal Revenue Code—which provides for an exclusion from gross income of the amount of a minister's parsonage allowance. I think I have received more letters questioning the advisability of the elimination of that provision from ministers than I have on any other provision in the bill.

Mr. Baker. We, as a joint committee, have taken a position on this, though again we do not speak for all of the ministers. We basically feel that the parsonage is not a part of the actual sanctuary and is entitled to tax exemption only to achieve equity with other churches which cannot separate housing from their sanctuaries.

The CHAIRMAN. We are to that extent subsidizing the total income of the minister.

Mr. BAKER. We are indeed.

The CHAIRMAN. It does not amount to much, figuratively speaking, in relation to the overall; it is $10 million.

Mr. BAKER. It is a subsidy to which I personally object.

The CHAIRMAN. Mr. Corman.

Mr. CORMAN. Mr Chairman, I just want to say that Dr. Baker not only speaks for 23 million Baptists, but also for at least one Methodist. I personally am opposed to charitable deductions for gifts to religious institutions in any form. I have always argued with my own minister, who does not agree with that. If taxpayers don't pay their income taxes, all we can do is send them to jail. But if they don't tithe, he can send them to hell. He has a better means of enforcement than we have.

The CHAIRMAN. Mr. Schneebeli.

Mr. SCHNEEBELI. Dr. Baker, you say you represent 22 or 23 million church-going people. Has the council of churches adopted any position in this legislation?

Mr. BAKER. First of all, most of our members are not members of the national council, but the national council did in 1970 adopt a statement in opposition to tax credits, yes.

Mr. SCHNEEBELI. The council of churches has?

Mr. BAKER. Yes.

Mr. SCHNEEBELI. I don't believe they have testified yet.

The CHAIRMAN. They have not asked for an appearance.

Mr. BAKER. There is a statement I can find for you.

Mr. SCHNEEBELI. Will you send it to me?

Mr. BAKER. I will.

The CHAIRMAN. We will make it a part of the record without objection.

(The statement follows:)

[From Compact, February 1970]

NATIONAL COUNCIL OF CHURCHES OF CHRIST IN THE U.S.A., NEW YORK CITY

The General Board of the National Council of Churches has repeatedly expressed its support for public education and urged that federal aid be given to public schools throughout the nation. All children have a right to share in this aid through attendance at public schools. To the extent compatible with the religion clauses of the First Amendment and the sound principle of public control of public funds, those attending private and parochial schools should benefit from this aid.

An effective and appropriate way in which children attending private and parochial schools may benefit from federal aid to public education is to make available to the children on a part-time basis the instruction and facilities of public schools.

In any program of federal aid that makes benefits available to children in nonpublic schools, certain safeguards should be designed to make clear that it is children and not schools which receive the benefit. We oppose grants from federal, state, or local tax funds for nonpublic elementary and secondary schools.

We oppose the payment from public school funds for tuition or "scholarships" for children to attend private or church-related elementary or secondary schools, or grants to their parents for that purpose. We are opposed to "tax-credits," "tax-forgiveness," and exemption from school taxes or other taxes for parents whose children attend nonpublic elementary or secondary schools.

We favor the supplying of dental or medical services, lunches, and other distinctly welfare services to all children, whatever school they may be attending, provided such services are identifiable by recipients as public services, and the expenditures are administered by public authorities responsible to the electorate.

Mr. Schneebeli. The person who preceded you said a lot of the schools starting in Florida are Baptist schools. Are they the same as Methodists—they are all over the place?

Mr. Baker. We are the same as Methodists—we are all over the place. This is one point on which I feel strongly. This kind of tax credit would encourage the establishment of the private schools, many of them in the South, some of them with the idea of evading integration.

The point I am trying to make here is that tax credits would encourage the establishment of potentially dirisive nonpublic schools. Some of them are meeting in Baptist churches. Some of them are meeting, Mr. Corman, in Methodist churches in the South. But, as I stated if you can control, as can be done in nonpublic schools, the curriculum and the teaching staff, you control the clientele of that school.

If I want to operate an all-white, nonprofit non-church-related academy, whether it meets in a church building or not, and if I am able to hire my own teachers and I set up my curriculum, I can have a school which will not appeal to any minority youngster. They will not even apply for admission. Tax credits would encourage such schools.

Mr. Schneebeli. These schools are being established without any additional tax motivation. With the tax motivation, there would probably be a lot more schools so established. Is the principal reason for this establishment the matter of segregation?

Mr. Baker. I can't speak for the schools in Florida, but in fact——

Mr. Schneebeli. In general.

Mr. Baker. I would not even want to say in general. I do think, though, having been born and raised in the South, that many of them are for this purpose. Many of them are not. Many of them are strictly for religious purposes.

Then I get back to my argument about whether or not the general taxpayer should help to promote the religious mission.

Mr. Schneebeli. I am surprised that they are being established at the rate of one a day.

Mr. Baker. I was, too. I sat in the room wishing someone on the committee would ask the previous speaker what the ratio of black students is in these nonpublic schools that are being established. I think that would be an interesting statistic.

Mr. Schneebeli. Can you supply it?

Mr. Baker. I do not have the information. If you could ask Dr. Tanney, I think it would be a good statistic to have.

Mr. Schneebeli. Thank you very much, Mr. Chairman.

The Chairman. Mr. Carey.

Mr. Carey. Thank you, Mr. Chairman.

I would like to agree with the witness, Mr. Baker, that back in those stormy days of 1965, when we tried to come to grips with the declining quality in American education, especially in the ghettos and distressed areas of our cities, we did have a fine spirit of cooperation. We worked without acrimony and without hostility to try to perfect language that would save the constitutional requirements of the first amendment.

I am pleased that, as a result of our efforts, that act has not been successfully challenged in any way. In fact, the theory of the act—at least in title II—has been upheld in the *Allen* case. The court ruled that the loaning of textbooks which are part of the public textbook program to children of nonpublic schools is constitutional. I think that decision illustrates that not every kind of assistance to children in nonpublic schools is impermissible.

So the question, I think, for us as members who are dedicated to the principle of separation of church and state is to find those ways that reach the child in some form so that the child receives the benefit but the religious institution does not.

Mr. BAKER. Separating these, as you know, is an extremely difficult thing.

Mr. CAREY. I agree.

Mr. BAKER. I would hope that very few churches would go on record as opposing children. I think you get into some serious theological arguments when you oppose children.

Mr. CAREY. Some oppose having children.

Mr. BAKER. Yes. Having four children of my own, I sometimes wonder if I should not have opposed it, with two teenagers.

Mr. CAREY. I have three times your problem.

Mr. BAKER. I sympathize with you.

Trying to make sure that public funds are channeled to give aid that a child deserves because he is a child, regardless of his parents' preferences, religiously or educationally, for him, is one thing. The channeling of public funds into the schools directly or indirectly—and, again, the title of this committee print at least indicates that this is an aid to schools—is an entirely different matter.

You have also raised a point that I have emphasized to American Government classes for years, and that is that Congress has a greater responsibility even than do the courts in seeking to determine the constitutionality of the acts it passes. The old argument of "Pass any law and then let the courts decide," I think, is a bad one.

Mr. CAREY. I subscribe to that. I have always held that it is an important function of Congress to weigh carefully the constitutionality of its own acts and then the courts will not have any entanglement with Congress.

Mr. BAKER. Yes. I think if Congress does perform this function of looking very carefully in the first instance at its acts with the question in mind "Is this constitutional?" and not just throwing off the tough ones onto the court, then we will have fewer problems.

Mr. CAREY. Since the theory of ESEA, which we did successfully enact, was that the concentration of poor children in major cities and in rural areas was a kind of a social impact which needed to be addressed by the Congress in its general welfare function, we worked somewhat effectively to target, in those benefits, to concentrations of disadvantaged children whether they be in the public or nonpublic schools.

Now, I want to correct for the record your statement that, the way this bill is drawn, it does not allocate moneys to the poor. In the drafting of the bill, the joint committee staff, and myself and my staff, were very careful to make certain that, as we interpret our draft, the poor who do not pay income taxes or persons who were working but whose tax liabilities were insufficient to get a credit would be entitled to one. So in this request, the bill is aimed at the poor.

Mr. BAKER. Yes; as I explained earlier, I did not have that part of the bill at my disposal when I wrote my testimony. I noticed, in both Mr. Weinberger's and Mr. Shultz' testimony, at least one of them was delighted that you had separated these two forms of credit, because they had serious questions about the constitutionality of payments to poor parents for school tuition.

Mr. CAREY. I do not think that is the way to put it. I do not think they had serious questions about the constitutionality of the entire bill. They did feel that the constitutionality of one aspect might be challenged because it provided for something more than a remission or credit. So this feature would be separated from the rest of the bill.

Mr. BAKER. That is correct. But the implication is there that there is more liability with one as against the other.

Mr. CAREY. Yes. I would have to disagree, though, with your use of an example as to how it will work adversely in the case of a taxpayer with children versus a taxpayer without children who pays real estate taxes. A large portion of the bill, title I, is aimed at relieving the local real estate tax, which is the major and, in some cases, the sole source of the support of public education.

The administration made a recommendation in line with the President's recommendation to the Commission on Aging that we find some way to relieve senior citizen taxpayers, who no longer have children, of some of their heavy costs of supporting public education. That is the thrust of title I of the bill.

So, while the family with the five children might be receiving up to $1,000 in tax credits, the other theory of the bill is that those who are paying now for schools and not directly receiving benefits therefrom would also be receiving some form of relief.

Mr. BAKER. There is a possibility—and maybe this is a problem with the legislation as it is written—after the veto of the HEW-Labor bill because of increased moneys—there is a possibility that this title I money will never be available, whereas title II can go into existence.

Do you see the point I am making? If the President is going to insist upon no increases in spending—and Mr. Weinberger and Mr. Shultz emphasized that they want no increases in spending—given the minimal decrease in income under title II, compared to the two-and-a-half-billion-dollar expenditures provided for in title I, the President might tend to permit the tax credits to go into effect and not disburse any funds provided for under title I.

So I think that you can get into a squeeze on this matter. It is a very real possibility.

Mr. CAREY. That is a major problem before the Congress—although not necessarily before this particular committee. We are all concerned.

Finally, I would like to disagree with the next to the last paragraph of your statement, where you state that this kind of bill would result or cater to the establishment of Black Panther, John Birch, Minuteman, or SDS schools, to name but a few. Such a statement is not in the spirit of constructive dialog. You would also have to say that the passage of ESEA and Headstart, which are available to these groups, had the same impact. These programs are available to nonpublic institutions.

In fact, just the obverse is true. In two cases, major demonstrations were held in New York City and in Washington, D.C., because denominational schools in the inner city were forced to close for lack of financial means. Parents who were not part of that denomination—in fact, parents of many denominations—demonstrated to try to persuade the denominational authority closing the schools to reverse its course and keep those schools open.

Theoretically, if they had wanted to have nonpublic schools for their own children, they could have gotten together to start a hedgerow school or backroom school. They preferred not to do that. They preferred to avail themselves of a school which was not necessarily of their denomination and they joined together in civic demonstration to keep that school open.

So, I think, this example runs counter to your notion that this kind of bill would cause fragmentation, division, and the proliferation of what I would have to say would be hate-based schools. I just don't believe that is true in this country.

Mr. BAKER. This is just a matter of your belief and my belief. I do not think that it is a parade of imaginary horribles. I think there are instances such as you have mentioned in which this is the case, but I also think that I can give some pretty clear instances, not right at this moment, of some of the other things that I have mentioned here.

I think title II encourages—I don't think it will automatically lead to—but I think it encourages and there is a distinct possibility that these divisive nonpublic schools will evolve.

Mr. CAREY. I think you shoud change your terminology when you say, "It is not a parade," to forecast what there would be. I forecast that the kind of school could never meet the standards that would be imposed by the State for the conduct of a sound educational program.

I also state, that in the committee's review of tax provisions, I would make certain that any organization founded on the basis of hate, division, and contumacious conduct to all of society would not qualify under the 501(c)(3) definition and therefore they would not qualify for the benefits of this bill.

Mr. BAKER. That is possible.

Mr. CAREY. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Byrnes.

Mr. BYRNES. Mr. Baker, in response to a question, I think you misstated the President's position in his veto on the HEW bill when you said he was opposed to any increases. He was opposed only to the increases in the aggregate that were in excess of the increases already provided in the budget request.

Mr. BAKER. What I was trying to get at——

Mr. BYRNES. I know what you were trying to get at, but you misstated it.

Mr. BAKER. Yes, sir. If I did misstate the President's position, it was not a deliberate misstatement.

The CHAIRMAN. Are there any further questions?

If not, Dr. Baker, we thank you for coming to the committee.

STATEMENT OF JACK BUTTRAM, WASHINGTON COUNSEL, AMERICAN ASSOCIATION OF CHRISTIAN SCHOOLS

Mr. BUTTRAM. I am Washington counsel for the previous witness. I would like not to have the impression left on the record by Dr. Baker's question, that he would have had someone on the committee ask how many black students were in the schools.

The CHAIRMAN. If you will identify yourself, we will be glad to let you supply us with that information if you will.

Mr. BUTTRAM. I do not have the information with me. My name is Jack Buttram, Washington counsel for the American Association of Christian Schools. I would not want the impression to stand on the record that the Amercian Association is a segregationist organization.

Mr. BAKER. I did not try to do that.

The CHAIRMAN. Would you please get the information for us, if you will, about the ratio of black students in the schools you represent.

(The following letter and statement were received for the record:)

AMERICAN ASSOCIATION OF CHRISTIAN SCHOOLS,
Washington, D.C., September 11, 1972.

Mr. JOHN M. MARTIN,
Chief Counsel,
Committee on Ways and Means,
Washington, D.C.

DEAR MR. MARTIN: Dr. A. C. Janney appeared before the Committee on August 17, 1972 to testify in support of Title II of HR 16141. During the Q & A period following the subsequent witness, Dr. John Baker, expressed surprise that AACS-type schools are reported to be opening at a rate approximating one a day and said something to the effect that he "wished someone on the Committee would have asked what the ratio of white to black pupils is in those schools."

As Dr. Janney had already left the hearing room to catch a plane he could not answer for himself, so at the conclusion of Dr. Baker's time I asked the Chairman for an opportunity to correct the impression left by Dr. Baker's question that AACS is a segregationist organization.

Enclosed is a statement by Dr. Janney offered for insertion in the record at the appropriate place. Thank you for your cooperation and interest.

Sincerely,

JACK BUTTRAM,
Washington Counsel,

SUPPLEMENTAL STATEMENT OF DR. A. C. JANNEY

Mr. Chairman, I am sorry that my schedule required that I leave the hearing room on August 17 to catch a plane; otherwise I should have been glad to answer Dr. Baker's question in person.

In response to the question of AACS policy, I would refer Dr. Baker to page seven of my prepared statement which appears in the record, but I did not read in summarizing my remarks for the Committee. That section of my testimony gives the policy and practice of the AACS on this question. Perhaps if I had read this aloud in the Committee room it would have made the matter clear and obviated Dr. Baker's question.

As a matter of record AACS schools do not keep records according to race, creed, or national orign. The division between the sexes is approximately that which appears in the general population. So far as membership in the AACS is concerned, none of these factors are taken into account either in joining or in not joining with the exception of adherance to the statement of faith which I supplied for the record following my testimony as Appendix I.

I would re-emphasize, for the Committee's benefit, that the AACS is a national organization, not devoted to representation of schools in a particular section of the Nation. I made reference to schools in the State of Florida because that is the section with which I happen to have the most first hand experience and acquaintance. But similar situations exist in Michigan, California, Texas, Ohio, etc.

I thank the Committee for the opportunity to clarify the record.

The CHAIRMAN. Our next witness is Mr. Robert Williams.

We are glad to have you with us, Mr. Williams. If you will identify yourself for the record, we will be glad to recognize you.

STATEMENT OF ROBERT WILLIAMS, VICE PRESIDENT, ILLINOIS COMMITTEE FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY

Mr. WILLIAMS. I am Robert Williams, pastor and citizen.

Chairman Mills and members of the committee, I am from Rock Island, Ill., and I am vice president of PEARL in Illinois and chairman of Citizens for Constitutional Education in Rock Island County.

I would like to file my statement, which is much too long to read in its entirety, but I would like to comment on most of it.

The CHAIRMAN. Without objection your statement will be included in the record at the end of your oral statement.

Mr. WILLIAMS. The organizations in part, and I have given a complete list to the clerk, are the American Baptist Churches for the Great Rivers Region, American Jewish Committee, Catholic Organization of Parishioners, Catholics Against State Aid, Citizens Concerned for Public Schools, Citizens for Constitutional Education, Concerned Educators of Chicago Metropolitan Area, DuPage Coalition for Public Schools, East Alton Education Association, the Ethical Humanist Society, the Illinois Association of School Administrators, Illinois Baptist State Association, Illinois Congress of Parents and Teachers, Illinois Council of Churches, Illinois Education Association, Jewish War Veterans, National Association of Catholic Laymen, St. Ferdinand's Neighbors and Parishioners, which is a group in Bishop McManus' area, Sandy Creek Baptist Association, plus others.

(The complete list follows:)

List of organizations which have adopted an official position in opposition to tax support for private and parochial schools.

American Baptist Churches for the Great Rivers Region.[1]
American Civil Liberties Union.
American Jewish Committee.
American Jewish Congress.[1]
Americans United for Separation of Church and State.[1]
Anti Defamation League of B'nai B'rith.[1]
Catholic Organization of Parishioners.[1]
Catholics Against State Aid.
Chicago Baptist Association.[1]
Chicago Region PTA.[1]
Chicago Urban League.
Citizens Concerned for Public Schools—Jacksonville PEARL.[1]
Citizens for Constitutional Education—Rock Island PEARL.[1]
Concerned Educators of Chicago Metropolitan Area.[1]
Concerned South Cook County Educators.[1]
Danville Education Association—Danville PEARL.[1]
DuPage Coalition for Public Schools—DuPage County PEARL.[1]
East Alton Education Association.[1]
Ethical Humanist Society.[1]
Greater Northwest Civic Association.[1]
Horace Mann League.
Illinois Area, United Methodist Church.
Illinois Association of School Administrators.[1]
Illinos Association of School Boards.
Illinois Baptist State Association.[1]
Illinois Congress of Parents and Teachers.[1]
Illinois Council of Churches.[1]
Illinois Education Association.[1]
Independent Voters of Illinois.
Jewish War Veterans.[1]
Metro East Citizens Committee.
National Association of Catholic Laymen
National Association Advancement of Colored People.
National Council of Jewish Women.
Northeastern Division IEA.[1]
Olney Baptist Association.[1]
Presbytery of Chicago.
Puffer-Hefty School District 69.[1]
Richards—Stenman.[1]
St. Ferdinand's Neighbors and Parishioners.[1]
Sandy Creek Baptist Association.[1]
Union of American Hebrew Congregations.
Unitarian Universalist Church.

[1] Affiliated with PEARL.

Mr. Williams. Honorable members of the committee, it is a privilege to come before you today as a citizen, as a pastor, as a churchman, as a taxpayer, as chairman of Citizens for Constitutional Education, representing the Illinois Committee for Public Education and Religious Liberty—PEARL—which is not anti-Catholic, anticlerical, or antiparochial schools, but for public education and religious liberty. Our position is:

> We oppose the allocation of public tax money or expected revenue directly or indirectly for private and parochial elementary and secondary schools, whether through direct payments or grants, auxiliary services, textbooks, vouchers, tax credits or any other form of parochiaid financed from public revenues.

We take this position on grounds of principle, although we are conscious of the pressure exerted for the past several years to provide public aid and special considerations for parochial and private schools to "prevent their departure from the educational and church scene." We ask you in your report to the House of Representative to put principle above pressure.

PEARL was organized in Illinois because it became apparent the pressure exerted was obscuring the principle and that legislators were not entirely aware of either. We discovered very quickly in our own group that principle was not in the same priority to those who gathered around our banner. Some had as chief consideration the danger to the church; others, the danger to public schools; others, the apparent unconstitutionality; and still others, the danger to the taxpayer. In our study of each proposal made at the State level and now the national level we have seen parochiaid bills presented to be:

1. Unconstitutional in word and intent.
2. Expensive and increasingly uneconomical.
3. In violation of the principle of separation of church and state.

Today we wish to apply these objections to the "tax credit" approach you now have before you in terms of principle, pressure, program, and prospect.

I. PRINCIPLE—ENTANGLEMENT BEGINS

If testimony were being given today in support of tax support of private wishes to build septic tanks, wells, and to finance private membership in swimming clubs and country clubs because citizens prefer them to the public facilities, everyone in this room would be laughing. Because it is a school which contains children, no one is laughing. We suggest, however, that the principle is still the same. Giving people deductions on their income tax to pay for private choices would cause a furor amidst all citizens who are willing to settle for the public facilities, and to give them a tax credit sounds impossible to even think, and then to pay them to use the private facility if their taxes are not high enough would seem preposterous.

Historically, private wishes have been protected by law, and have been quickly surrendered to public control only when such control seemed necessary and wise. There is no advantage except economic which can prompt today's church to surrender to governmental control. Entanglement of government in church affairs is a necessary result of parochiaid. "He who pays calls the plays."

Our Congressmen are being asked to vote against the Constitution which says no to parochiaid as establishment of religion. The intent of parochiaid is in conflict with the constitutional intent to maintain independence of both forces. People who laugh at the Constitution, particularly in our State of Illinois, where it is quite specific, make the citizens dismayed—and often angry—constitutional prohibitions are held up to ridicule. Yet the philosophy is, "We'll do it anyway."

A further extension is, "If we can't pay for it ourselves, we'll find someone who can!" As usual, it is the taxpayer who ends up with the bill.

Thomas Jefferson said, in the preamble of the "Bill for Establishing of Religious Freedom."

"To compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical; even the forcing him to support this or that teaching of his own religious persuasion." He also said, "* * * corrupts the principles of that religion it is meant to encourage."

The tax-credit approach is still parochiaid, because the recipient is finally the school, which exists to propagate an opinion. In a parochial school, whatever it teaches which is common to all educational processes, is still taught with the understanding that at some time in the school curriculum the real reasons for the school's existence will be taught clearly and directly. If, for instance, an underlying reason is the teaching of Catholic doctrine about human life, one can see clearly that public tax money, contributed through parents via H.R. 16141—the credit will be fully refundable and, accordingly, will be paid to an individual whose tax liability for the year is less than the credit to be made available, or withheld from support of public purposes through tax credits, will be used to support a school which teaches it. Yet millions believe the Roman Catholic position on birth control to be archaic, cruel, and inhuman, as well as impractical, and money would be spent to spread this objectionable doctrine, because a parochial school rightfully has a duty to teach the beliefs and opinions of its sponsoring ecclesiastical organization.

Cleverly our opponents have concentrated on the child's right to an education, but the right is legally provided in public schools, supported by taxes, and in private choice to provide special schools.

We hear much about the "child-benefit theory" and services—buses and lunches—now provided come under this theory. It is suggested in a subtle manner, that this doctrine considered in the courts of years, extended to the "church-benefit theory." The school does not exist without the child, so the child is lifted up, but many fear for the church without the school. The cry is "Save the child." Is it not really "Save the school!" or underlying this, "Save the church."? The parent's pocketbook in the tax-credit approach is only a method to accomplish the same ends as direct payment, vouchers, and auxiliary services were proposed to do. I would like to point out that parents don't close because they don't get the money.

Direct or indirect support of private schools, by whatever means, even the at-first-glance-acceptable tax-credit approach would be a backward step in American life. After coming to the New World to escape domination of many kinds, attempts were made to establish an "American version" of domination, which seemed not so objectionable. Old mistakes of state-established churches were repeated by their American cousins.

The Old World free churches even sought establishment. The
burning of witches, the refusal of licenses to strolling preachers,
and other sorts of harassment of people with a private view contrary
to the established churches, which all together at the time of the
American Revolution were only 5 percent of the American people,
brought a new look at abuses of the American church, established.

With today's nonestablished churches having as members over 60
percent of the American population, with church statistics used, not
affiliations claimed by people no longer in churches officially, the
repeat of old mistakes could be considered dangerous. The philoso-
pher, George Santayana, put it: "He who does not know history is
bound to repeat it." With great pain the churches were disestab-
lished, and have remained so since. Let the cycle not begin again.

We are naturally distressed to see the principle fought so hard in
the various States become so fractured by the national push for
parachiaid now so apparent. This is not a new matter to us. So we
would have you look also at the pressure.

II. PRESSURE—ENTANGLEMENT DIVIDES

The position of one national organization pushing for parochiaid is
clear, as expressed in its pamphlet widely distributed across the land:
Our Government is a government of minority pressure groups, and
whoever gets there first with the most pressure wins.

In our State, Illinois, the taxpayer has been asked to pay for church
programs, with few standards except attendance. Even fire and safety
standards have been rejected as too expensive for parochial schools to
meet. There is no relief noticed in Federal legislation proposed for tax
credits, we note. In Illinois, the taxpayer has been asked to pay for
salaries of uncertified teachers in nonaccredited schools with selective
admission standards, without strict fiscal accounting and yet und
control of parish churches. The bills before you change none of this for
Illinois.

Churches across America have regrettably said, in short: "Put us
on relief * * * grant aid for our program or we'll close our schools
and let you worry about it!" There is no assurance that unwanted
schools (ghettos, inner city) would not be closed after aid either.

The implied and often stated suggestion is that retaliation at the
polls will follow the denial of aid and that help at the polls would be
the result of granting a reprieve to a program underfinanced by those
who believe in it.

I am an elected official myself and I understand what politics
means to people in terms of voting. We understand the position of
our opponents. They need money to operate their schools because
they can no longer finance them. Pressure seems to be the best move,
in their view, so they find what arguments they can.

The "tax-saving" argument of the opposition is temporarily effec-
tive, but it is a myth in the long run. It simply does not hold water
that two complete systems, plus new systems organized to get in on
parochiaid, would be less expensive than current support of public
education by tax money and private education by private support.

Testimony was given in Illinois that eventual "complete support"
is the objective. Any legislation which is declared constitutional is

only the initial step. Once the first hurdle is passed, it will take only more pressure to mount the next ones.

Witness the escalation from $4.3 to $42 million in Pennsylvania by pressure politics. Everyone seems to want to save the taxpayer's money, or to spend the least, but the taxsaving myth should have as its signal to the taxpayer the signs familiar in Illinois, on parochial school grounds. What is purported to be saved is actually the objective.

Such entanglement of church and state is divisive. It puts system against system, long existing side by side as proper judgment of educational philosophies. The bills before your committee are in effect Catholic aid bills, since most other parochial schools are increasing in both enrollment and tuition. A vote for Catholic aid is a vote against the people of America. Seventy percent of the people are opposed to parochiaid, says the Gallup poll, including 30 percent of Roman Catholics. These citizens mostly believe a church should pay for its own program or change to one it can.

If Catholic aid bills are hopes for votes, they are at best temporary. In Michigan, after parochiaid passed, the citizens rose up and put through a constitutional amendment prohibiting such financing of church programs, and opponents of parochiaid won 71 of 83 counties, including a 75-percent Catholic suburb of Detroit. The important word in the campaign became "creeping parochiaid." If busing can be so divisive, why not parochiaid, if its opponents want to make it so? To date, they have sought to defeat it and uphold the American principle of separation of church and state, rather than spend their energies in vitriolic campaigns.

PEARL would plead for continuance of the separation standard instead of the inevitable campaign of retaliation should tax-credit parochiaid pass.

But who are we to tell you about pressure? You know it and feel it, and certainly we would add ours, but coupled with the principle upon which this Nation was founded, that no group would have a favored position in American life. Let us then move on to consider.

III. PROGRAM—ENTANGLEMENT DESTROYS

The church can ill afford parochiaid, whatever its denomination. The public school has problems today it is not responsible for, and cannot handle without cooperation. To divert its energies and resources into private privilege is to damage it, and whatever institution, including the church, which dares to fall into the trap of draining off its best.

Parochial education is the program of the church, Catholic and Protestant. It is legitimate and important, and should not be weakened by entanglement with governmental control. Yet the public is being asked to finance what private groups, individuals, and congregations are no longer willing to support fully, apparently because other things are more important and because of decline in religious orders. We consider these as internal problems of individual congregations and church organizations, and reiterate our belief that every church is obilged to support its own program or change to one it can!

Msgr. James C. Donoghue, Director of the Division of Elementary and Secondary Education of the U.S. Catholic Conference in Washington, which represents the bishops, said on the "Today" show: "If the poor Catholic Church could build the present parochial school system, then the affluent Catholic Church should be able to continue it."

As long as parochiaid, in whatever form, is being sought and people believe it forthcoming, the real issue is not faced and parochial schools, many of them very fine schools, are being further weakened. This is regrettable. As churchmen many of PEARL's members, familiar with church finance, see stewardship practices in need of overhaul, rather than a poor, struggling, flat-on-its-back organization in need of public support for its very existence.

The decline in religious orders which naturally are able to provide quality teaching from dedicated nuns and brothers at low cost, is regrettable, but this is not the taxpayer's responsibility. In a survey made by the Catholic High School Board in my hometown, 9,253 families were circularized and 2,926 responded. This question was asked:

> If vocations to religious life continue to decrease, the day may come when only a very few religious are available to teach at Alleman. If this eventually occurs, do you feel that Alleman should remain open as a private Catholic school, staffed almost entirely by lay teachers, or would it be better to close Alleman and redirect our efforts?

The results showed 6.11 percent not answering, 16.33 percent answering "Don't know," 30.21 percent answering "Stay open," and 46.95 percent answering "Close!" Other answers accounted for 0.34 percent.

The program of a church requiring public aid is suspect Either it is too expensive or the people don't want it. Most educators recognize that parochial education, counting "contributed services" is generally more expensive than public education, mainly because of smaller numbers, but much misinformation is being promulgated.

The Protestant mind has long believed a fallacy—that Roman Catholic people are "good givers." Though most clergymen of both faiths know different, this is exploited by proponents of parochiaid in a double-barreled attempt to indicate that church resources and parish income are being strained to the limit and the taxpayer is being "saved" millions by the existence of parochial schools.

Many parochial schools do not charge tuition to members' children, and most are financed directly from the church treasury.

Often families with children in school are asked to contribute a mere $3 per week to the church for support of the entire church program, including the parochial school. To most Protestants this is a very meager subsidy, or "token" pledge. Distressingly some of the opponents believe that whatever is difficult to acquire from your own resources; simply vote yourself the money.

The national per capita giving of Protestants if $96.84—per confirmed member—with the Seventh Day Adventists leading the way with $368.32. This denomination has the third largest parochial school system and also charges tuition. Yet it is opposed to parochiaid and has testified against it. The fact is, if Roman Catholics contributed to the Church like Protestants do, public aid and/or tax credits would not have to be sought for their church's program.

Speaking personally the amount of money paid by my wife and me into the treasury of our church in 1971 for that proportion of our church budget program, which deals with religious education in our own local congregation—in our congregation that is 37.9 percent; in the Catholic Church it is ordinarily 70 percent because of being a full-time school—with direct benefit to our own children, exceeds even the maximum $400 proposed by H.R. 13020 and H.R. 13495 being considered by this committee today.

We did receive a tax deduction, of course, but it is discriminatory to offer a tax credit to some and not to others, when the purpose of the contribution is the same. Incidentally, I am not asking for a tax credit. And taxes can be paid under protest, and this is what you risk.

Another myth is "double taxation." As an argument, it has sentimental mileage, but is not valid any more than for older people or childless couples, who pay taxes and do not use public schools, We all support jails, but who among us hopes to benefit directly by its facilities?

People pay for what they want. Tuition is not taxation, and church support is already deductible on the income tax, just as are property taxes. If the church wants more money, then let its people pay it voluntarily, not under governmental encouragement which certainly constitutes entanglement of a divisive bent.

The program of the church should be financed by church people. Tuition will be raised by the amount that you pass because how else will the school benefit unless additional money can re received?

Finally, let us deal with prospect.

IV. PROSPECT—ENTANGLEMENT BECOMES FRIGHTENING

PEARL is a coalition of public school people and parents, of clergymen and denominational organizations, of congregations with voted positions against parochiaid, and of Protestant, Catholic, and Jewish persuasions. We are people banded together with uncommon interests and different life styles, but with a common purpose, to prevent with all that is in us the passage of parochiaid legislation into law, regardless of its type. This purpose is centered in reasons we have stated and in further fears.

In a day when many churches are rent apart by the political activity of their national organizations, individual congregations have been able to unify with a unamimous vote on this issue, whereas they cannot take a stand on fair housing, or on all sorts of things. But the people have a unanimous opinion and will vote in a meeting their stand on this issue. We banded together on this issue and have over 2.5 million people in Illinois who belong to these organizations.

The church people in our group interested in the ecumenical movement feel the church and synagogue threatened on the very grounds of freedom it has possessed since disestablishment of state churches in America. The beloved community of faith has suffered under state dominance before in history. Church lands and properties have been confiscated and church leaders have been captured and installed as puppets of governmental regimes.

To consider tax-credit parochiaid as a prelude to state dominance of religion and religious institutions seems overalarming to our opponents and those whose primary interest is in saving money no matter how little or for how long. But we consider tax-credit parochiad as a further breach of the wall, leading eventually to a major leveling of that wall. Supreme Court Justice Clark wrote in a 1963 opinion:

> It is no defense to urge that the religious practices here may be relatively minor encroachments of the First Amendment. The breach of neutrality that is today a trickling stream may all too soon become a raging torrent; and in the words of Madison, "It is proper to take alarm at the first experiment on our liberties."

We have long experience in the states fighting this battle and have seen political fortunes crumble over this issue. The danger to the church requires political action and pressure is met with pressure, with both public schools and political institutions harmed.

Only a little here will be remembered later as a major breakthrough when more is sought, and having once broken the dike, it will be simple to flood the area. The cry is "We can up it any time, so just get it now!"

Parochial education is the program of a church, often an individual parish. We believe it is often a good program, too, and can be a proper judgment on its public counterparts. It is not competence or competition at issue here, but composition of the parochial school. It exists to support the church program, of which it is historically an integral part.

Incidentally, more people learn religion outside of parochial schools than inside. There are methods by every church to teach religion. The church should have the right to decide its own way and pay for that method.

We see danger in these bills to the church, Catholic and Protestant. As soon as public aid starts, parish collections and church support decline for purposes publicily supported, as we know already with church colleges.

In our community when parochiaid was proposed people were saying in Catholic churches; we don't need to give to the church; now we are going to get it from the State, and the priests had a good deal of trouble letting the people know that talk was not reality.

Further, the pressure to put children back into parochial schools which have drastically declined would be an obvious result of tax-credit parochiaid, with resulting holes in public education programs.

Let us speak of the harm to the poor and the black. Public schools will become the dumping ground. In our State of Illinois, now, the percentage of Negroes in Catholic schools is 7.4 percent, while in public schools it is 18 percent. Tax-credit legislation would make the church the unwilling handmaiden of racists.

No nun or any priest I know would seek to segregate its school, but the church school can be made the unwilling handmaiden of the racists. Private schools may discriminate, not on race, but on every other qualification possible.

Also, the poor and black, to receive the quality education of a good parochial school, and we realize that there are many such, must pay the price of indoctrination to receive the benefits.

The church has given many gifts to civilization in institutional form. These include schools, hospitals, libraries, orphanages, and welfare. Most are public now, and rightly so, because they were expanded to benefit the entire community. Yet those which remain in church control are model institutions, or properly should be. Whatever the church does should be done well as an example to its public counterparts.

The entanglement of the Government of the United States and its branches of services, such as internal revenue, education, and others, would quickly become redtape not worth the, at best, temporary benefits of tax-credit parochiaid.

CONCLUSION

We have come a long way and stated many reasons for asking you not to recommend H.R. 16141, H.R. 13020, H.R. 13495 and other forms of tax-credit parochiaid for passage by the U.S. House of Representatives. As a violation of principle, entanglement begins; as pressure, entanglement divides; as program, entanglement destroys; and in prospect, entanglement becomes frightening.

To avoid the latter two, please put principle above pressure!

Thank you.

(The complete statement follows:)

STATEMENT OF REV. ROBERT O. WILLIAMS, CHAIRMAN, CITIZENS FOR CONSTITUTIONAL EDUCATION, AND VICE-PRESIDENT, ILLINOIS COMMITTEE FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY (PEARL)

PRINCIPLE ABOVE PRESSURE—INTRODUCTION

Honorable Members of the Committee, it is a privilege to come before you today as a citizen, as a Pastor, as a churchman, as a taxpayer, as Chairman of Citizens For Constitutional Education, representing the Illinois Committee For Public Education And Religious Liberty (PEARL), which is not anti-Catholic, anti-clerical, or anti-parochial school, but FOR public education and religious liberty. Our position is:

"We oppose the allocation of public tax money or expected revenue directly or indirectly for private ard parochial elementary and secondary schools, whether through direct payments or grants, auxiliary services, textbooks, vouchers tax credits, or any other form of parochiaid financed from public revenues."

We take this position on grounds of principle, although we are conscious of the pressure exerted for the past several years to provide public aid and special consideration for parochial and private schools to "prevent their departure from the educational and church scene." We ask you in your report to the House of Representatives to put. . . .

PRINCIPLE ABOVE PRESSURE

PEARL was organized in Illinois because it became apparent the pressure exerted was obscuring the principle and that legislators were not entirely aware of either. We discovered very quickly in our own group that principle was not in the same priority to those who gathered around our banner. Some had as chief consideration the danger to the church; others, the danger to public schools, others, the apparent unconstitutionality; and still others, the danger to the taxpayer. In our study of each proposal made at the state level and now, the national level, we have seen "parochiaid" bills presented to be:

1. Unconstitutional in Word and Intent.
2. Expensive and Increasingly Uneconomical.
3. In Violation of the Principle of Separation of Church and State.

Today, we wish to apply these objections to the "tax credit" approach you now have before you in terms of Principle, Pressure, Program, and Prospect; first. . . .

1. Principle—entanglement begins

If testimony were being given today in support of tax support of private wishes to build septic tanks, wells, and to finance private membership in swimming clubs and country clubs because citizens prefer them to the public facilities, everyone in this room would be laughing. Because it is a school which contains children, no one is laughing. We suggest, however, that the principle is still the same. Giving people deductions on their income tax to pay for private choices would cause a furor amidst all citizens who are willing to settle for the public facilities, and to give them a tax credit sounds impossible to even think, and then to pay them to use the private facility if their taxes are not high enough would seem preposterous.

Historically, private wishes have been protected by law, and have been quickly surrendered to public control only when such control seemed necessary and wise.

There is no advantage, except economic, which can prompt today's church to surrender to govermental control. Entanglement of government in church affairs is a necessary result of parochiaid. "He who pays calls the plays!"

Our congressmen are being asked to vote against the Constitution, which says NO! to parochiaid as establishment of religion. The intent of parochiaid is in conflict with the Constitutional intent to maintain independence of both forces. People who laugh at the Constitution, particularly in our state of Illinois, where it is quite specific, make the citizens dismayed . . . and often, angry . . . constitutional prohibitions are held up to ridicule! Yet, the philosophy is, "We'll do it anyway!" A further extension is . . . "If we can't pay for it ourselevs, we'll find someone who can!" As usual, it is the taxpayer who ends up with the bill.

Thomas Jefferson said, in the preamble of the Bill For Establishing of Religious Freedom:

"To compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and adhors, is sinful and tyrannical; even the forcing him to support this or that teaching of his own religious persuasion." He also said . . . . "corrupts the principles of that religion it is meant to encourage."

The tax-credit approach is still parochiaid, because the recipient is finally the school, which exists to propagate an opinion. In a parochial school, whatever it teaches which is common to all educational processes, is still taught with the understanding that at some time in the school curriculum, the real reasons for the school's existence will be taught clearly and directly. If, for instance, an underlying reason is the teaching of Catholic doctrine about human life, one can see clearly that public tax money, contributed through parents via H.R. 16141 ("The credit will be fully refundable, and accordingly will be paid to an individual whose tax liability for the year is less than the credit to be made available.") or withheld from support of public purposes through tax credits, will be used to support a school which teaches it. Yet, millions believe the Roman Catholic position on birth control to be archaic, cruel, and inhuman, as well as impractical, and money would be spent to spread this objectionable doctrine, because a parochial school rightfully has a duty to teach the beliefs and opinions of its sponsoring ecclesiastical organization.

Cleverly, our opponents have concentrated on the child's right to an education, but the right is legally provided in public schools, supported by taxes, and in private choice to provide special schools.

We hear much about the "child-benefit theory," and services (buses and lunches) now provided come under this theory. It is suggested in a subtle manner, that this doctrine considered in the courts for years, be extended to the "church-benefit theory!" The school does not exist without the child, so the child is lifted up, but many fear for the church without the school. The cry is "Save the child!" Is it not really, "Save the school!" or underlying this, "Save the church"? The parent's pocketbook in the tax credit approach is only a method to accomplish the same ends as direct payment, vouchers, and auxiliary services were proposed to do.

Direct or indirect support of private schools, by whatever means, even the at-first-glance-acceptable tax-credit approach would be a backward step in American life. After coming to the New World to escape domination of many kinds, attempts were made to establish an "American version" of domination, which seemed not so objectionable. Old mistakes of state-established churches were repeated by their American cousins. The Old World free-churches even sought establishment. The burning of witches, the refusal of licenses to strolling preachers, and other sorts of harassment of people with a private view contrary to the established churches, which altogether at the time of the American Revolution were only 5% of the American people, brought a new look at abuses of the American church, established. With today's nonestablished churches having as members over 60% of the American population, with church statistics used, not affiliations claimed by people no longer in churches officially, the repeat of old mistakes could be considered dangerous. The philosopher, George Santayana, put it: "He who does not know history is bound to repeat it!" With great pain, the churches were disestablished, and have remained so since! Let the cycle not begin again.

We are naturally distressed to see the principle fought so hard in the various states become so fractured by the national push for parochiaid now so apparent. So we would have you look also at the. . . .

II. Pressure—entanglement divides

The position of one national organization pushing for parochiaid is clear, as expressed in its pamphlet widely distributed across the land: Our government is a government of minority pressure group, and whoever gets three first with the most pressure, wins.

In our state, Illinois, the taxpayer has been asked to pay for church program, with few standards except attendance. Even fire and safety standards have been rejected as too expensive for parochial schools to meet. There is no relief noticed in federal legislation proposed for tax credits, we note. In Illinois, the taxpayer has been asked to pay for salaries of uncertified teachers in non-accredited schools with selective admission standards, without strict fiscal accounting and yet under control of parish churches.

Churches across America have regrettably said, in short. . . . "Put us on relief . . . grant aid for our program or we'll close our schools and let you worry about it!" There is no assurance that unwanted schools (ghettos, inner-city) would not be closed after aid, either.

The implied and often stated suggestion is that retaliation at the polls will follow the denial of aid and that help at the polls would be the result of granting a reprieve to a program underfinanced by those who believe in it. We understand the position of our opponents . . . they need money to operate their schools because they can no longer finance them. Pressure seems to be the best move, in their view, so they find what arguments they can.

The "tax-saving" argument of the opposition is temporarily effective, but it is a myth in the long run. It simply does not hold water that two complete systems, plus new systems organized to get in on parochiaid, would be less expensive than current support of public education by tax money and private education by private support.

Testimony was given in Illinois that eventual "complete support" is the objective. Any legislation which is declared constitutional is only the initial step. Once the first hurdle is passed, it will take only more pressure to mount the next ones.

Witness the escalation from $4,300,000 to $12,000,000 in Pennsylvania by pressure politics. Everyone seems to want to save the taxpayer's money, or to spend the least, but the tax-saving myth should have as its signal to the taxpayer the signs familiar in Illinois, on parochial school grounds. What is purported to be "saved" is actually the objective.

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But, who are we to tell you about pressure? You know it and feel it, and certainly we would add ours, but coupled with the principle upon which this nation was founded, that no group would have a favored position in American life. Let us then move on to consider . . .

III. Program—entanglement destroys

The church can ill afford parochiaid, whatever its denomination. The public school has problems today it is not responsible for, and cannot handle without cooperation. To divert its energies and resources into private privilege is to damage it, and whatever institution, including the Church, which dares to fall into the trap of draining off it best.

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"If the poor Catholic Church could build the present parochial school system, then the affluent Catholic Church should be able to continue it."

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Many parochial schools do not charge tuition to members' children, and most are financed directly from the church treasury! Often, families with children in school are asked to contribute a mere $3.00 per week to the church for support of the entire church program, including the parochial school. To most Protestants, this is a very meager subsidy, or "token" pledge! Distressingly, some of our opponents believe that whatever is difficult to acquire from your own resources, simply vote yourself the money!

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Speaking personally, the amount of money paid by my wife and me into the treasury of our church in 1971 for that proportion of our church budget program which deals with religious education in our own local congregation, with direct benefit to our own children, exceeds even the maximum $400 proposed by H.R. 13020 and H.R. 13495 being considered by this Committee today. We did receive a tax deduction of course, but it is discriminatory to offer a tax credit to some and not to others, when the purpose of the contribution is the same!

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So, finally, let us deal with. . . .

IV. Prospect—entanglement becomes frightening

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To consider tax-credit parochiaid as a prelude to state dominance of religion and religious institutions seems over-alarming to our opponenents and those whose primary interest is in "saving money," no matter how little or for how long. But, we consider tax-credit parochiaid as a further breach of the wall, leading eventually to a major leveling of that wall. Supreme Court Justice Clark wrote in a 1963 opinion:

"It is no defense to urge that the religious practices here may be relatively minor encroachments of the First Amendment. The breach of neutrality that is today a trickling stream may all too soon become a raging torrent; and in the words of Madison, 'It is proper to take alarm at the first experiment on our liberties.' "

We have long experience in the states fighting this battle, and have seen political fortunes crumble over this issue. The danger to the Church requires political action, and pressure is met with pressure, with both public schools and political institutions harmed.

Only a little here will be remembered later as a major break-through when more is sought, and having once broken the dike, it will be simple to flood the area. The cry is "We can up it any time; so just get it now!"

Parochial education is the program of a church, often an individual parish. We believe it is often a good program, too, and can be a proper judgment on its public counterparts. It is not competence or competition at issue here, but composition of the parochial school. It exists to support the church program, of which it is historically, an integral part. We see danger in these bills to the Church, Catholic and Protestant. As soon as public aid starts, parish collections and church support decline for purposes publicly supported, as we know already with church colleges. Further, the pressure to put children back into parochial schools which have drastically declined would be an obvious result of tax-credit parochiaid, with resulting holes in public education programs.

Let us speak of the harm to the poor and the black. Public schools will become the dumping ground. In our state of Illinois, now, the percentage of Negroes in Catholic schools is 7.4%, while in public schools it is 18.0%. Tax-credit legislation would make the church the unwilling handmaiden of racists. Private schools may discriminate, not on race, but on every other qualification possible. Also, the poor and black, to receive the "quality" education of a good parochial school, and we realize there are many such, must pay the price of indoctrination to receive the benefits.

The Church has given many gifts to civilization in institutional form. These include schools, hospitals, libraries, orphanages, and welfare. Most are public now, and rightly so, because they were expanded to benefit the entire community. Yet those which remain in church control are model institutions, or properly should be. Whatever the Church does should be done well as an example to its public counterparts.

The entanglement of the government of the United States and its branches of services, such as Internal Revenue, Education, and others, would quickly become redtape not worth the, at best, temporary benefits of tax-credit parochiaid.

CONCLUSION

We have come a long way and stated many reasons for asking you not to recommend H.R. 16141, H.R. 13020, H.R. 13495, and other forms of tax credit parochiaid for passage by the United States House of Representatives. As a violation of principle, entanglement begins: as pressure, entanglement divides; as program, entanglement destroys; and in prospect, entanglement becomes frightening!

To avoid the latter two, please put—principle above pressure!

The CHAIRMAN. We thank you, sir. Are there any questions?

Mr. CAREY. I have just one question.

Reverend Williams, is PEARL of Illinois a nonprofit organization?

Mr. WILLIAMS. Yes.

Mr. CAREY. Do you enjoy tax exemption?

Mr. WILLIAMS. We enjoy tax exemption like all nonprofit organizations.

Mr. CAREY. I would say then that we draw the point too fine.

Mr. WILLIAMS. However, we are not a for-profit organization. There is a difference between a——

Mr. CAREY. But you are a tax-exempt organization.

Mr. WILLIAMS. Let us look at this the way it is actually divided. We are a not-for-profit corporation. Contributions to our organization are not tax deductible.

Mr. CAREY. I was not coming to that. But you are a tax-exempt organization?

Mr. WILLIAMS. Yes.

Mr. CAREY. Therefore your activities as you carry them out with contributed moneys are exempt from any taxation?

Mr. WILLIAMS. I don't think I am getting your question.

Mr. CAREY. You are a tax-exempt organization. The contributions made to you which finance the activities of your organization and which pay your way here are to pay for the publication——

Mr. WILLIAMS. I am paying my own way, sir.

Mr. CAREY. Let us assume that your activities in the public sector which help people to gather together to express their opinions are exempt from taxation. That is correct, is it not?

Mr. WILLIAMS. I am not sure I follow what you say.

Mr. GREEN. Will the gentleman yield?

Mr. CAREY. I yield.

Mr. GREEN. I suspect the question is, does this organization we are talking about have any apostolic mission whatever?

Mr. WILLIAMS. No, sir. This is a coalition of these organizations. We have an office in Chicago and we have a board of directors from these various organizations. We are a group that agrees on only one issue.

Mr. CAREY. Do some of the organizations which contribute money for your activities enjoy tax exemption as church organizations? Are the contributions to their treasuries tax deductible?

Mr. WILLIAMS. That is correct.

Mr. CAREY. So there are, indirectly, some tax moneys involved in your organizations.

Mr. WILLIAMS. Very small.

Mr. CAREY. But indirectly. Therefore, to carry Jefferson's point to its logical conclusion, the fact that I am compelled to help support your contributions of money for the propagation of opinions which I disbelieve in, offends the principle you are speaking for.

Mr. WILLIAMS. No church compels its people to give money.

Mr. CAREY. But you are getting tax-deductible money. I defend that. I want you to do that. Even if you are using moneys to advance opinions with which I disagree, I think that is a healthy and vigorous way to have dissent and discussion.

I do not want to carry Jefferson's principles to an impossible conclusion, but I think you do. That is where we differ. I do not find moneys from any source which help a child in school get a better education, as we do in existing acts such as the ESEA, Headstart, school lunches, and provisions of transportation. These acts do not offend any part of our constitution under the general welfare. That is where we disagree.

Let me warn you about carrying your principle too far. You state that you and your wife pay more than the tuition for the part of the budget of your church which is used for religious education.

Mr. Williams. Right.

Mr. Carey. Let me state that you may be in jeopardy just by the way you draw up that budget because the Internal Revenue is now ruling that if a church has to ask for additional budget commitments for educational purposes, be it parochial or religious education purposes, and charge a fee for that purpose——

Mr. Williams. There is no fee.

Mr. Carey. When is a fee not a fee? If you contribute generally in support of education and do not call if a fee, the child gets the same benefit, does he not? If you call it "tuition," you are against it.

Mr. Williams. The reason why the Catholic school must charge tuition is because the people refuse to give the money to the church to support the program. What you are doing is simply giving replacement dollars.

In Philadelphia, for instance, when tax money was defeated by the Supreme Court and the schools then charged additional tuition, the people withheld from their contributions to the church that amount of money they had to pay in tuition.

You are asking in these bills for the people to contribute more money to the church. Now you are simply saying, "We will give you back that additional amount that you give as a tax credit."

Mr. Carey. I think it is a matter of semantics now. All of the churches—the Orthodox Jewish synagogues, Seventh Day Adventists, et cetera, are explicit and honest enough to state that what they term tuition is for education purposes. They could have lumped the educational costs in the school budget and asked for additional contributions.

I think that would be unsound and unwise. In your case if the moneys for education of your children were called "tuition" instead of "contributions," you would not be able to deduct them as you deduct them now.

Mr. Williams. That is correct. In the same way the money given by a Catholic family to a Catholic church which does not charge tuition is deductible the same way my money is. Most of the schools in our area are completely financed by the parish.

Mr. Carey. There is a companion proposal circulating in Congress. As long as these contributions remain at the present level, and if they could be used to support the schools and eliminate tuition, we could be more generous and give up to the 20-percent level. Do you have any idea how much that would cost if all the churches could get their parishioners up to the 20-percent level? Do you have any idea how much more money would be in the bill?

Mr. Williams. The amount of money if our people gave 20 percent of their income?

Mr. Carey. Right.

Mr. Williams. If they used the total 20 percent deduction?

Mr. Carey. Correct.

Mr. WILLIAMS. The average American gives 1½ percent, I believe, of his income to the church. In our church it is about 3 percent, in my local church. The United Presbyterian Church asks people to give 5 percent, which is a dollar per week per thousand dollars of annual income, roughly. The Bible says to tithe.

If the people of our church tithed, the budget of our church would be over $600,000 a year. But it is not. Our people do not tithe. So if you doubled that, take the full 20 percent, that would be phenomenal. But the people of the Protestant Church give money to other organizations.

The reason for the 5 percent recommendation is that it is hoped that people would give the other 5 percent to other tax-deductible charities.

Mr. CAREY. You do agree thoroughly, though, with the continuation of the tax deductibility of contributions——

Mr. WILLIAMS. I did not say that.

Mr. CAREY. Do you or do you not?

Mr. WILLIAMS. I really cannot say that I do. I am a strict separationist and I believe, sir, that the house I live in should be taxed in the same way that your house is and I have said so in sermons each year that I will pay that percentage of taxes on the house I live in that my congregation is willing to pay on the church property, which I also think should be taxed.

Now you can quibble if you want about the portion of it being used for worship. I feel also that the whole idea of the chaplaincy should be reviewed, but I certainly feel that this tax deduction and the unwillingness of many churches to pay taxes on their property is incorrect.

Mr. CAREY. I am asking you if you are in favor of the elimination of the contribution for religious and charitable purposes presently enjoyed by taxpayers.

Mr. WILLIAMS. I am in favor, first of all——

Mr. CAREY. Yes or no.

Mr. WILLIAMS. Well, I am in favor of——

Mr. CAREY. I am entitled to get an answer to the question. Are you in favor of the charitable and religious deduction as it is enjoyed now?

Mr. WILLIAMS. After the removal of the tax exemption for institutions and church organizations, and church properties then that is a proper exemption, yes. It is a proper deduction.

Mr. CAREY. I am asking you if you are in favor of the present deduction.

Mr. WILLIAMS. At the present time I am in favor of the present deduction.

Mr. CAREY. You are in favor of the deduction?

Mr. WILLAIMS. Yes, at the present time.

Mr. GREEN. Mr. Chairman, I want to say something, since the gentleman alluded to Philadelphia. He also said something which I find, and a lot of people I represent will find, slightly offensive if not more than that. You left the impression that one of the reasons that the parochial schools aren't succeeding is that the people don't care enough to contribute, if they cared more to contribute and really cared enough about these schools they would contribute more and the schools would survive and they would not be in the financial situation they are in.

The simple fact of the matter is, and justifiably so, they are a little upset. First of all, they know this. They know that the parochial schools in Philadelphia average out at a yearly cost per student of those schools of $478. They take a look at the public system and they see the public schools spend something over a thousand, close to $1,100 a year.

Now they are paying for that system totally.

Mr. WILLIAMS. Does that include, sir, the contributed services?

Mr. GREEN. Of the teaching nuns and things like that?

Mr. WILLIAMS. Yes

Mr. GREEN. It includes everything, I would think.

Mr. WILLIAMS. Do you think it includes that?

Mr. GREEN. Yes, I do. In other words—first of all, you are interrupting me, which you are not allowed to do—one of the reasons I think that maybe the parochial school costs are less is because there have been people with vocations who donated their services and taught children for nothing, which I think is commendable.

Mr. WILLIAMS. Yes.

Mr. GREEN. And I am sure you do, too. The simple fact of the matter is they paid for both systems. There are no people in the city who have cared more for the education of all of our children than the people who have assumed that double burden. I don't want anybody to leave the impression they didn't care enough when they cared the most.

Mr. WILLIAMS. That, I take it, is not a question.

Mr. GREEN. No, that is a statement.

The CHAIRMAN. Are there further questions?

We thank you, Reverend Williams, for bringing your testimony to the committee.

I notice in the room our colleague from Michigan, Congressman Vander Jagt. Congressman, would you like to introduce the next witness? If so, please come to the desk.

STATEMENT OF HON. GUY VANDER JAGT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. VANDER JAGT. I would like to introduce to the committee a very distinguished school superintendent, Mark Vander Ark, who has been superintendent of schools of the Holland Christian School system for 11 years. This is one of the really outstanding school systems in my entire congressional district. Mr. Vander Ark will be accompanied, in case there are any questions, by two members of the Holland Christian Board of Education, Jerry Hertel and Bill Vogelzang.

I present now to this outstanding committee Mr. Vander Ark.

The CHAIRMAN. Thank you, Mr. Vander Jagt. We appreciate your coming to the committee and introducing these gentlemen to us.

Mr. Vander Ark, we appreciate having you with us this morning and those accompanying you at the table.

STATEMENT OF MARK VANDER ARK, SUPERINTENDENT, HOLLAND CHRISTIAN SCHOOLS, HOLLAND, MICH.; ACCOMPANIED BY WILLIAM VOGELZANG, PRESIDENT, AND JERRY HERTEL, VICE PRESIDENT, BOARD OF EDUCATION

Mr. Vander Ark. I am Mark Vander Ark, 969 Pine Avenue, Holland, Mich., superintendent of Holland Christian Schools. I am starting my 12th year in this position.

I wish to speak specifically in support of tax credit legislation. We have submitted a copy of the script to the secretary with the last page slightly enlarged.

The Chairman. If you desire to do so, we will include it in the record.

Mr. Vander Ark. If you will please.

The Chairman. Without objection your entire statement will be made a part of the record and you may proceed.

Mr. Vander Ark. I realize that in contrast to those who represent State and national organizations with fine acronyms I speak for just the little people of America.

Holland Christian Schools have an enrollment of 2,702 in grades kindergarten through 12. On June 14, 296 seniors graduated from our high school. As it now appears, this will be our largest group of graduates.

We employ a staff of 115 fully certified teachers, who are paid according to a fixed salary schedule. Pay levels are relative to public teacher salaries, though generally somewhat lower. Our high school is fully accredited by the University of Michigan. The average per pupil cost for 1972-73 is estimated to be $578, exclusive of capital investment in buildings and transportation.

Our aim is to provide thorough, quality education in academic studies, athletics, the arts, and in prevocational areas. Success is evidenced by the achievement of our graduates in colleges and universities, easy placement of business education students, real athletic prowess, and selection of our band for the last presidential inaugural parade and as a demonstration group for the recent American School Bank Directors Association National Convention held in Lansing, Mich. Our teaching staff is competent and stable. Many have advanced degrees, the masters and beyond.

Holland Christian Schools were established in 1902. Our school system is based on an article of religious faith which holds that the primary responsibility for education of children rests on the parents to whom the children are entrusted by God. Parents, in our modern times, should seek to discharge this obligation through their own school associations and boards, which engage Christian teachers in schools that are based on the Bible, the infallible word of God.

Parents and other who believe in this principle assume financial responsibilities for maintaining Christian schools according to their earning power. At present parent tuition and contributions average 10 percent of their gross earnings. No children of any parents who are spiritually interested in such education are turned away for financial reasons, nor for race, color, or church affiliations. The church-state issue does not enter into our argument as far as we are concerned.

Holland Christian Schools enrollment equal about 30 percent of the total K-12 school population of this district. We enjoy great respect in our community, and our people are greatly admired for exercising their rights for running a voluntary school system, as a supplement to the public schools and other nonpublic schools of our area. Without question the pluralistic nature of American society is proving itself here. By exercise of our constitutional rights, Holland Christian Schools provide a vital option to parents in choosing a school for their children.

We reached the peak of our enrollment in 1966 at 2,866. Since then we are experiencing a steady decline in numbers. Two factors contribute: (1) the declining birth rate, (2) drastic increase in educational costs. The members of this committee are fully aware of how schools in America are absorbing larger and larger percentages of our economic resources.

We are pioneering in advanced educational designs to keep a quality program of Christian education within reach of our people. Currently the following changes are being effected by a massive board, staff, and patron effort:

1. Returning, after 5 years of temporary 3-3 organization at the secondary level, to a 4-year high school, with a 3-grade middle school and concentration of primary children in one building with intermediates in another. Two elementary schools have been phased out. This change produced $60,000 in savings for the first year.

2. Differentiated staffing, with teams for teaching developing in each unit.

3. The extended school year, and flexible school calendar.

4. Innovative curriculum development committees, with teacher self-evaluation inherent.

Nonetheless, our schools like many others are on a collision course for maintaining its historic goals. Our operating budget for 1972-73 will be $1,507,633. This figure represents a 95-percent increase from 1964 to 1965, merely 8 years before. This doubling of costs in 8 years took place without any significant change in our program. A comparable increase in taxes for support of public education took place in our community. These combined increases are in no way matched with increased earnings of our people.

This is our problem: Double-payment concept—hardship on many parents.

I am especially pleased to hear the committee's recognition of the unfairness of the double payment, the double-taxation burden, and the hardship this creates on many worthy religious people in America. This is our problem in Holland.

Our people look to tax credit legislation as a vital answer to the dilemma of our schools. The tax credit is only fair. The human right for alternatives in education even when based on religious convictions is no longer a right when it can be priced out of reach. Our schools provide good, acceptable basic education in all the skills and attitudes deemed necessary for American citizenship. It is unfair and without honor for the government to accept and expect this public service free of charge.

Those who say that these schools will continue on and on and if we want them, we should pay for them, are wholly unrealistic in knowing the limits of human resources. Unless government at this level and/or State level gives financial recognition of this service, we will ultimately have a single, monopolistic educational system.

Tax credit legislation is economical.

On the basis of educational cost in our community alone, it is estimated that if all per-pupil costs were held to our level, education in Michigan would cost $1 billion less per year. The reference to "loss of revenue"—and I know it has to have some kind of name—resulting from title II in the short summary of H.R. 16141 is misleading. Such savings of public funds in Michigan alone would be more than twice the cost of H.R. 16141. The loss of revenue by inclusion of nonpublic schoolchildren in public schools would be much greater. Positively, preserving our nonpublic schools saves billions of public funds, and at the same time offers wholesome competition we think public schools should enjoy.

Tax credit legislation seems like the American way of facing up to the crisis in nonpublic schools. Tax exemptions are being granted for other worthy purposes. Encouragement of voluntary, nonpublic education is most important to our American, pluralistic culture. We think this is what the President is asking of the Congress. Such basically and traditionally American legislation is what thinking Americans are solidly behind. We know that the community of Holland wants our schools to continue on and on.

Thank you very much for this open opportunity to present our needs and our interests in the proposed legislation under consideration by this very worthy committee.

(The complete statement follows:)

Statement of Mark Vander Ark, Superintendent, Holland Christian Schools, Holland, Mich.

I am Mark Vander Ark, 969 Pine Ave., Holland, Michigan 49423—Superintendent of Holland Christian Schools. I am starting my twelfth year in this position.

Holland Christian Schools have an *enrollment of 2702* in grades Kindergarten through 12. On June 14th, 296 seniors graduated from our high school. As it now appears, this will be our largest group of graduates.

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Parents and others who believe in this principle assume financial responsibilities for maintaining Christian Schools according to their earning power. At present, parent tuition and contributions average 10% of their gross earnings. No children of any parents who are spiritually interested in such education are turned away for financial reasons, nor for race, color, or church affiliation.

Holland Christian Schools enrollment equals about 30% of the total K–12 school population of this district. We enjoy great respect in our community, and our people are greatly admired for exercising their rights for running a voluntary school system, as a supplement to the public schools and other non-public schools of our area. Without question the pluralistic nature of American Society is proving itself here. By exercise of our constitutional rights, Holland Christian Schools provide a vital option to parents in choosing a school for their children.

We reached the peak of our enrollment in 1966, at 2,866. Since then, we are experiencing a steady decline in numbers. Two factors contribute: 1) the declining birth rate, 2) drastic increase in educational costs. The members of this committee are fully aware of how schools in America are absorbing larger and larger percentages of our economic resources.

We are pioneering in advanced educational designs to keep a quality program of Christian Education within reach of our people. Currently the following changes are being effected by a massive board, staff, and patron effort:

1. Returning, after 5 years of temporary 3–3 organization at the secondary level, to a four year high school, with a three grade middle school, and concentration of primary children in one building with intermediates in another. Two elementary schools have been phased out. This change produced $60,000 in savings.
2. Differentiated staffing, with teams for teaching developing in each unit.
3. The extended school year, and flexible school calendar.
4. Innovative curriculum development committees, with teacher self-evaluation inherent.

Nonetheless, our system like many others, is on a *collision course for maintaining its historic goals*. Our operating budget for 1972–73 will be $1,507,633. This figure represents a 95% increase from 1964–65, merely eight years before. This doubling of costs in eight years took place without any significant change in our program. A comparable increase in taxes for support of public education took place in our community. These combined increases are in no way matched with increased earnings of our people. This is our problem.

Our people look to tax credit legislation as a vital answer to the dilemma of our schools. *The tax credit is only fair.* The human right for alternatives in education is no longer a right when it can be priced out of reach. Our schools provide good, acceptable basic education in all the skills and attitudes deemed necessary for American citizenship. It is unfair and without honor for the government to accept and expect this public service free of charge.

Tax credit legislation is economical. On the basis of educational cost in our community alone, it is estimated that if all per pupil costs were held to our level, education in Michigan would cost $1 billion less per year. The reference to "loss of revenue" resulting from Title II in the short summary of H.R. 16141 is misleading. The loss of revenue by inclusion of non-public school children in public schools would be much greater.

Tax Credit legislation seems to be *the American way of facing up to the crisis in non-public schools.* Tax exemptions are being granted for other worthy causes. Encouragement of voluntary, non-public education is most important to our American, pluralistic culture.

Thank you very much for this open opportunity to present our needs and our interests in the proposed legislation under consideration by this very worthy committee.

The CHAIRMAN. Mr. Vander Ark, we thank you, sir, for bringing your statement to the committee and the members of your board with you.

Are there any questions of Mr. Vander Ark? If not, we thank you very much.

Our next witness is Mrs. Florence Flast.

Mrs. Flast, we welcome you to the committee. If you will identify yourself for us by giving us your name, address, and capacity in which you appear, we will be glad to recognize you.

STATEMENT OF FLORENCE FLAST, VICE CHAIRMAN, NEW YORK COMMITTEE FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY

Mrs. FLAST. Mr. Chairman and honorable members of this committee:

My name is Florence Flast. I am vice chairman of the Committee for Public Education and Religious Liberty (PEARL) which represents 33 major civic, religious, educational, civil rights, and labor organizations in New York State with combined memberships of about 10 million New Yorkers. A list of these organizations is attached to my statement.

Our members, of every religious, ethnic, racial, and economic group, including the vast majority of parents of school children, believe strongly in the free public school system as a unique and fundamental institution of our democracy, one in which children of all backgrounds and religious persuasions have the opportunity to learn together and develop respect for each others' values and contributions to the common good—a system open to all children without discrimination, in which equity and equal protection under the law can be enforced.

We are also deeply committed to the preservation of religious liberty guaranteed by our Federal and State constitutions, as defined by Madison and Jefferson, its authors, and interpreted by the courts of this Nation. What Thomas Jefferson said two centuries ago is still true: "To compel a man to furnish through taxation contributions for the propagation of religions in which he disbelieves is sinful and tyrannical."

It is a singularly American principle which was more recently articulated by our late President John F. Kennedy, when he said, "I believe in an America where the separation of church and state is absolute * * * where no church or church school is granted any public funds or political preference." Tax credit legislation does violence to this principle and should more properly be called religious education assistance.

TAX CREDIT VIEWED AS AID TO RELIGIOUS SCHOOLS

The intent and effect of tax credit legislation are obvious. It is a circuitous means of forcing all taxpayers to contribute toward the refunding of tuition payments to parents of children attending nonpublic schools, 95 percent of which are religiously affiliated and controlled. A tax credit is a thinly disguised tuition grant, to be fully refunded whether or not an individual has any tax liability.

Moreover, it is a preferential form of governmental assistance to some religious institutions in that it would provide tax funds only for those denominations which maintain full day schools. The parent who pays for religious instruction during afterschool hours or on Sunday is not being offered this tax bonanza, nor is it being offered to the taxpayer who makes voluntary contributions to his church or synagogue.

Religious liberty in America means not only the right to pursue one's own beliefs and the right to choose a religious education for one's children, but freedom from compulsory taxation to foster the religious beliefs of others.

Yet, title II of this legislation would do just that. The taxes upon all citizens would have to be raised to meet the deficits brought about by the special tax credits going to a privileged few. We do not deny any parent his right to choose private or religious education for his children, but no parent has the right to demand a share of public tax funds to subsidize a private choice just because he is not using available public services. He has no more right to ask us to support the religious teachings of his children than to meet the deficits of his church resulting from diminished contributions.

The courts have consistently barred direct public grants to parochial schools, finding their primary purpose to be "vehicles for promoting religious faith."

Indirect aid through tuition grants or reimbursements to parents of nonpublic school children have likewise been invalidated, the judiciary maintaining that "what may not be done directly, may not be done indirectly." It would seem to us that this then precludes tax credits or other such forms of Government subsidy to religious schools via parent or child.

This has nothing to do with parental rights, educational diversity, or pluralism in our contemporary society, the arguments put forth by the committee headed by Cardinal Krol and Cardinal Cooke when parent they opened their Washington office in March.

NINETY PERCENT OF U.S. CHILDREN ATTEND PUBLIC SCHOOLS

The argument for diversity of choice in education is mythical; 90 percent of the children in this country, including almost two-thirds of all Catholic children, attend public schools. Of the remainder, 90 percent attend Catholic schools, 5 percent other sectarian schools, and 5 percent nonsectarian. The options for a non-Catholic are certainly not increased by granting aid to parochial schools, and exclusionary admissions standards of private schools screen out those who might indeed "choose" to attend them.

RESTRICTIVE ADMISSIONS IN NONPUBLIC SCHOOLS

The selective admissions and retention policies of nonpublic schools, by religion, academic achievement, national origin, behavior, and socioeconomic status make them more elitist than pluralistic. Racial segregation is the all-too-frequent byproduct, with private schools having a majority of white students and urban public schools a majority of nonwhites. The goal of an integrated society is not served by financing private education.

There is no evidence, either, of the effectiveness of a competitive "free market" concept between public and nonpublic schools, according to a prestigious New York State Commission on Education.[1] They found only two distinctions, "sectarianism and a stronger code of discipline in some sectarian schools," neither of which justifies the expenditure of public funds.

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[1] New York State Commission on the Quality, Cost, and Financing of Elementary and Secondary Education.

FINDINGS OF THE FLEISCHMANN COMMISSION IN NEW YORK

This 18 member commission, commonly referred to as the Fleischmann commission because of its chairman, Manly Fleischmann, was appointed by the Governor and the board of regents over 2 years ago to conduct a comprehensive study of education, public and private, the first of such scope in two decades in our State.

Its recommendations on school finance dealt with the inequalities which title I of the instant legislation attempts to correct in part and we support title I. The other pertinent recommendations called for a halt to further State funding of nonpublic schools, both sectarian and nonsectarian. A 13-member majority also concluded that:

1. The principle of separation of church and State should not be abolished. Public funds or tax revenues ought not to be used in support of the attendance of students at sectarian schools.

2. The U.S. Supreme Court decisions in June of 1971, appear to preclude any amount of direct aid other than for incidental services, such as transportation. The principles on which those cases were decided would also prohibit any amount of public aid in the form of vouchers or other financial assistance to students in religious schools or their parents.

3. Racial segregation in sectarian schools exceeds that in public schools. The commission felt that it could not advocate increased aid to nonpublic schools where the degree of segregation is so acute, while at the same time having the public school system devote its attention and resources to relieving the inequities caused by racial imbalance.

4. The economic interests of the State, over the long run, would be better served by providing "influx aid" for public schools to absorb transfer students from nonpublic schools as they phase down in enrollment than by assuming the obligation to cover the deficit spending for Catholic education.

5. The fiscal restraints under which the public school system now operates also dictates against public support of nonsectarian, nonpublic schools even though there are no constitutional bars to such aid.

6. Public policy dictates that there be no change made in the historic doctrine of separation of church and state. The commission cited the divisiveness and disorder in some countries resulting from competition between public and religious schools for public funds.

Furthermore, while I cannot speak for other States, I can tell you that in New York the nonpublic elementary schools are not accredited by the State nor are their educational standards enforced.[2]

THE PLURALISM OF THE PUBLIC SCHOOLS

Public schools are not monolithic institutions as they have been pictured, but pluralistic in every sense, independently controlled by 16,000 local lay boards of education. Their governance, expenditures, students, size, faculties, curricula, quality, and innovativeness are as varied as the communities they serve. Their teaching staff tend to be better qualified and their students outperform many of the private schools.[3]

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[2] See, "Three Out of Ten, the Nonpublic Schools of New York City,'" prepared by the New York Department of City Planning, March 1972.

[3] Ibid.

Public schools share in common only one mandate, from which private schools are exempt; that is, they must operate within constitutional guidelines of nondiscrimination in admissions and hiring practices, academic freedom, due process, equality of opportunity, public accountability, and the prohibition from engaging in religious or political indoctrination.

Parental choice is window dressing. The mounting demands for tax funds to support nonpublic schools have been based on their claim that these schools are in trouble and need the money to stay open, that they are on the verge of collapse.

THE FACTS ABOUT NONPUBLIC SCHOOL ENROLLMENT

However, private education is far from collapsing. Jewish, Protestant, and nonsectarian day schools are constantly expanding and increasing enrollments despite high tuitions. The decline in Catholic parochial schools must be viewed in the context of their unprecedented growth from 1940 to 1965 when, without Government aid, they tripled their enrollment.

Since 1965, Government support has been increasing steadily and markedly through a series of devices, which await court decisions. In spite of increased support their enrollment is declining and, according to extensive research available from both Catholic[4] and public sources,[5] it is not due to the tuition burden, but to waning parental interest in parochial education, a steady decline in teaching nuns and brothers and a falling birthrate.

This was also the conclusion of the Fleischmann Commission which noted that enrollment trends are downward in both public and nonpublic schools for the next decade, with the largest decline expected in Catholic schools. They found no evidence that increased tuitions had affected enrollment; 25 of the Catholic schools that closed charged no tuition at all. The commission stated that "No public policy will halt the decline." They found no present threat to the survival of other nonpublic schools.

Their report also pointed out that whereas the per-pupil expenditure is higher in public schools than in parochial schools at present, this differential will rapidly disappear with the substitution of lay teachers for religious order teachers, increases in wage demands, encouraged by public aid, and the upward spiral of other education costs.

EXPERT CHALLENGES ASSERTIONS ABOUT AID

The myths about tuition costs affecting enrollment in Catholic schools, the inability of parishioners to contribute more, their survival dependent on government grants and the oft-repeated argument that it would cost the taxpayer less if aid were provided nonpublic schools as opposed to accommodating transferred pupils in public schools are all set forth and refuted by Louis R. Gary in the July 22d issue of Saturday Review. Copies of this article are attached.

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[4] Report by Boston College, "Issues of Aid to Nonpublic Schools," prepared for the President's Commission on School Finance, 1971; Study conducted by the University of Notre Dame, "Economic Problems of Nonpublic Schools," 1971; Michigan Catholic, December 30 issue, reporting on conference of 40 Catholic bishops.

[5] Report of the New York State Commission on the Quality, Cost, and Financing of Elementary and Secondary Education, ch. 5, February 1972, the Gary report, and "Three Out of Ten."

Louis Gary, former chairman of Cardinal Spellman's Committee on Educational Research and consultant to President Nixon's Commission on School Finance, had also provided much of the research for New York State's Fleischmann Commission. He presents the real reasons for the falling enrollments which he says "will drop 42 percent this decade, whether or not new income is found."

No amount of government aid is going to reverse this trend, nor is this a proper cause for government concern. Neither is it likely to have any impact on the public schools. Last year New York State's non-public-school enrollment dropped 45,000 in grades K–6, while public school enrollment increased only slightly over 1,000. Elementary school enrollment throughout this Nation is projected downward for the next decade and no strain is anticipated on the public schools from the closings of nonpublic schools, according to U.S. Commissioner of Education, Sidney P. Marland, Jr.[6]

PUBLIC SCHOOLS IN DIRE FINANCIAL STRAITS

But the financial plight of public schools is one of serious proportions. Public schools are going bankrupt in many cities across the country and many have had to suspend operations for anywhere from a week to 6 weeks because they have run out of funds. This is most prevalent in States which do support parochial schools, as in Ohio and Pennsylvania.

Last year New York City's Board of Education was unable to apply for a share of the State and Federal money available to provide breakfasts for poor children because they did not have the 20 cents per child which they needed to match the 40 cents of State and Federal funds. In fact, few poor children attend private schools. For the poor and disadvantaged there is no other educational home but the public schools.

Not only are city schools suffering, but many suburban school districts are on austerity budgets. These are the needs to which Congress should be addressing itself, not the financial plight of some private schools.

Under the provisions of H.R. 16141, the Federal payments for public school education would average $50 per child, the revenue loss for tuition aid to private schools is estimated at an average of $115 to $150 per child. It is Federal legislation that would give far greater support to private than to public schools without even requiring the same maintenance of effort. Would private schools be involved in rulings against racial imbalance and expenditure inequities?

VOTERS CONSISTENTLY OPPOSE GOVERNMENT AID

The people of this country, whenever they have been given the opportunity to express themselves at the polls on this issue of public tax support for religious schools, have made it very clear that they cherish the religious freedom which has been our heritage.

In Illinois and in New York they voted for constitutional barriers against aid to sectarian schools. In referendums in Michigan and Nebraska the same was true, despite supposed private opinion polls to the contrary. And these voters have been of all religious persuasions—Protestant, Catholic, Jewish and members of the 250-odd religious sects to which our citizenry subscribe.

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[6] Daily News, June 16, 1972, a UPI release containing quote from interview with Commissioner Marland.

HAZARDS OF A TAX CREDIT PROGRAM

Tax credits, though, would be a powerful incentive for a proliferation of State-financed private and religious schools. It would encourage racial, class, religious, ethnic, and economic segregation and greatly increase the tax burden on our citizenry.

Despite their belief in the principle of public education, how many parents would not opt for a private school if it were no strain on their pocketbook? How many people would not take a taxi or a private limousine if it cost them no more than a subway or bus ride? To encourage this in education will lead to a splintering of our society and a polarization from which we could never recover.

Tax credits will inevitably encourage the raising of tuitions and the pressures on Congress to increase the tax credit annually will be tremendous for the parochial school lobbyists are seeking full, not partial support.

Public education would be destroyed, religious liberty would be a myth, the costs would be astronomical, the fabric of our society rent—and all for what cause?

We plead with you to drop title II from this measure. Encourage our children to go to school together so they are better prepared to live and work together in one indivisible nation.

Thank you, Mr. Chairman.

(The documents following were supplied for inclusion in the record:)

MEMBERS OF THE COMMITTEE FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY

American Ethical Union
Americans for Democratic Action
Americans for Public Schools
American Jewish Committee, New York Chapter
American Jewish Congress
A. Philip Randolph Institute
Association of Reform Rabbis of New York City and Vicinity
B'nai B'rith
Citizens Union of the City of New York
City Club of New York
Community Service Society, Committee on Public Affairs
Council of Churches of the City of New York
Episcopal Diocese of L.I., Department of Christian Social Relations
Humanist Society of Greater New York
Jewish Reconstructionist Foundation
Jewish War Veterans, New York Department
League for Industrial Democracy, New York City Chapter
National Council of Jewish Women
National Women's Conference of American Ethical Union
New York Civil Liberties Union
New York Jewish Labor Committee
New York State Americans United for Separation of Church and State
New York State Council of Churches
New York State Federation of Reform Synagogues
State Congress of Parents and Teachers, New York City District
Union of American Hebrew Congregations, New York State Council
Unitarian-Universalist Ministers Association of Metropolitan New York
United Community Centers
United Federation of Teachers

United Parents Associations
United Synagogue of America, New York Metropolitan Region
Women's City Club of New York
Workmen's Circle, New York Division

[From the Saturday Review, July 22, 1972]

MYTHS, MONEY, AND CATHOLIC SCHOOLS: THE POLITICS OF AID—AND A PROPOSAL FOR REFORM

(By Louis R. Gary and K. C. Cole[1])

By now it has become an accepted fact of public life that the nation's Catholic schools are in trouble. The reasons are all too familiar. Costs are going up, enrollments are going down, and Catholic schools are closing their doors at the rate of one a day. Indeed, enrollments in the U.S. Catholic elementary and secondary schools have dropped 18 per cent in the last three years—and conservative estimates predict they will drop another 42 per cent by 1980.

Political leaders, most notably President Nixon and New York's Governor Rockefeller, repeatedly have promised to save the Catholic schools with some type of public aid. To be sure, the substantial Catholic vote plays a part in their thinking. But political leaders, reinforced by church leaders, also fear that, if the Catholic school system is allowed to collapse, the four million pupils now in Catholic schools throughout the country will be dumped into public schools, which already have more than enough problems of their own.

Unfortunately, public debate about the future of Catholic schools is filled more often with myths and rhetoric than with facts and analysis. The debate, therefore, is confused, the public is misled, and the proposed solutions are ill-chosen. An examination of the real reasons for the enrollment decline—and of the real possibilities of getting large amounts of new public money—leads to the conclusion that the best solution for Catholic schools is to regroup, consolidate, and cut their losses.

The major myth in the debate centers on tuition. The three major aid alternatives considered by the President, Governor Rockefeller, and others are 1) tax credits for families that pay tuition to Catholic schools, 2) direct grants to parents to cover the cost of tuition, and 3) vouchers that schools redeem for cash. All are based on the false premise that enrollments are falling because Catholic parents cannot afford to pay tuition charges to Catholic schools. The assumption is that, if somehow the government can give aid to Catholic schools, tuition will stop rising; if tuition stops rising, enrollments will stop falling. Although this reasoning may be valid for a small proportion of individual families, it is not true as a whole. In the past, tuition in most Catholic schools has been so low that it has not played a major part in the enrollment decline. Two years ago average yearly tuition in U.S. Catholic elementary schools was only $42. Last year it had jumped to $120—but enrollments have been dropping for a decade.

If enrollments were dropping primarily in inner cities, then it could correctly be inferred that even modest tuition presented an unbearable family burden. But enrollment is dropping even faster in affluent suburbs. The very families that can pay tuition most easily are the ones that are choosing to send thior children to free public schools. Further, fully one-third of the Catholic elementary schools that closed in the past five years in New York State, for example, charged no tuition at all.

The real reason why enrollment is dropping is that Catholic parents—for many reasons—simply are choosing not to send their children to Catholic schools. Even in 1962, the high point of Catholic school enrollment, only half of the nation's Catholic school-age population was attending Catholic schools. Today only 33 per cent of that population is enrolled in Catholic schools. Moreover, the schools are just beginning to reflect the recent drop in Catholic birth rates. Infant baptisms of U.S. Catholics fell from 36 per 1,000 in 1955 to 23 per 1,000 in 1970. The Pill is in the Catholic community, and the potential pool of Catholic school children is decreasing rapidly.

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[1] Louis R. Gary, former chairman of Cardinal Spelman's Committee on Educational Research and consultant to President Nixon's Commission on School Finance, wrote "Collapse of Nonpublic Education: Rumor or Reality?" for New York State's Fleischmann Commission. K. C. Cole, editor of the Fleischmann Commission Report, is now an associate education editor of *Saturday Review*.

Increasingly, Catholic families moving to the suburbs are choosing public schools, which often have attractive physical facilities, gyms, learning labs, and other niceties that Catholic schools can't afford. Academically, however, Catholic schools are as good as public schools—if not better. Catholic schools also are caught in ideological conflicts in the church itself. Liberal parents believe that teaching in Catholic schools can be too restrictive; conservative parents are dissatisfied with the new permissiveness and lack of fidelity to Roman Catholic dogma.

Many Catholic schools are losing their distinctiveness. The growing substitution of lay teachers for nuns and brothers in Catholic classrooms leaves the schools with a less religious flavor; it also leaves the Catholic schools less distinct from public schools.

Along with falling enrollments, the decline in numbers of teaching brothers and nuns is the most serious economic problem for Catholic schools. In dollar terms, the presence of the religious-order teacher represents a great subsidy to the school. On a national average, religious-order teachers receive cash stipends and room and board worth $2,550 for teaching in Catholic schools, compared with the average salary of $5,597 paid to laymen.

The problem is that this kind of sacrifice is coming to an end. Fewer young people are entering religious orders. In 1950, 93 percent of the teachers in Cholicat schools across the country were brothers or nuns; today fewer than hf areal brothers or nuns.

Lay teachers are becoming more expensive. Traditionally, lay teachers in Catholic schools have been paid far less than teachers in public schools. But as the number of lay teachers has increased, so has their bargaining power. They still earn less than their public school counterparts, but in many cities they have joined unions, and by 1980 they probably will be paid as much as public school teachers.

Catholic schools depend on two main sources of income to cover these rising costs: general church revenue and tuition. General church revenue comes from Sunday collections and fund-raising events to which all Catholics (not just those with children in Catholic schools) contribute. Today more than 55 percent of general revenue is channeled into parish schools, leaving little for all other parish services, which also have rising costs. Meanwhile, the level of contributions is falling off and failing to keep up with inflation. Overall, Catholic families contribute less than 2 percent of their incomes to their parish church, and the rich contribute a far smaller proportion of their income than do the poor.

The other source of income—tuition—also is not likely to produce new money. To be sure, some private Catholic high schools—those with an excess of upper-middle-class applicants—could increase tuition without causing an enrollment decline. But as there is no mechanism in the church to redistribute money between rich schools and poor schools, or rich parishes and poor parishes, this would not help the elementary schools, which make up three-fourths of the nation's 11,000 Catholic schools.

Across the country Catholic schools are predominantly middle-class institutions. If the schools increased tuition to cover their costs, tuition would be so high that it would price out many middle-income (and large) families. Thus, while the cost of tuition generally has not caused enrollment decreases in the past, if it is increased, it might precipitate a mass exodus from Catholic schools in the future. The poor certainly would be driven out, and Catholic schools play an important role in many cities, where the enrollment often includes a large percentage of non-Catholic black pupils. Obviously, Catholic schools in the cities cannot raise tuition if they are to provide alternatives to the public schools for the poor. Conversely, tuition should be raised in wealthier parishes, based on the family's ability to pay.

The past rhetoric of Catholic leaders, however, will make such a strategy extremely difficult, if not impossible. For years church leaders—in order to get aid—have tried to convince politicians that Catholics couldn't contribute more to their schools. They were, of course, telling their people the same thing. Now, if massive aid does not come from the government, the clergy will have so convinced the people that they cannot afford to sustain their schools that the people—even those who can afford it—will never believe that they can.

But not even substantial amounts of new income from tuition, contributions, or the government are going to help the Catholic schools until church leaders stop concentrating their efforts on keeping schools open that will close in a few years anyway. Instead of continuing to preserve buildings, church leaders should begin to preserve the option of Catholic education itself.

This means they must close inefficient schools and consolidate the system. The fact is, enrollment will drop 42 per cent this decade, whether or not new income is found. The difference between the current policy of overextension and a policy of planned consolidation will determine whether the Catholic school system will decline to half its present size or will collapse completely.

Church leaders have not planned well for the future. Until recently they continued to hire new teachers; they closed only a few schools; they continued to build new schools in the suburbs. Each year, as enrollment falls, they have been paying higher and higher costs to educate fewer and fewer pupils. If the church leadership persists in trying to keep the school system operating at its present level, Catholic schools will run an annual operating deficit of $2.2 billion by 1975, pupil/teacher ratios in Catholic elementary schools will fall from 30/1 today to 12/1 by 1980. Every move to slow that ratio by consolidation could save Catholic schools millions of dollars.

One reason why church leaders have not consolidated the schools is that they depending on promises of public aid to keep the system going. But political leaders who promise the aid don't know whether they can deliver it and conform to the Constitution—and they probably can't. In return, Catholic leaders say that public aid will stop the decline in enrollments—which it won't.

Catholic have good reason to expect something. Last August, in a speech to the Knights of Columbus, President Nixon departed from his prepared text to pledge support to Catholic schools. He noted the number of school closings and said: "We must resolve to stop that trend and turn it around. You can count on my support to do that." The pledge not only startled the Knights but astonished the President's own staff, who wondered how they were going to fulfill it. Indeed, Sidney P. Marland, the U.S. commissioner of education, said he knew of no legal means of allocating public funds directly to nonpublic schools or to the parents of children who attend them. In April the President renewed his pledge for aid, in a speech to the National Catholic Educational Association, but this time he said that finding a means to do it would take time. Once again, however, he contributed to the myth that money will solve the problem and, worse yet, that the money can be delivered.

For his part, Governor Rockefeller also contributes to the rhetoric that tends to obscure the real solutions to the problems of Catholic schools in the future. Two years ago, when he ran for re-election, he placed ads in every major Catholic newspaper in the state, listing the aid bills enacted during his administration. "We've done a lot," the ads boasted. "We'll do more." At that time Rockefeller also formed a major state commission on education and then told church leaders privately that he controlled the commission chairman, Manly Fleischmann, a Buffalo lawyer. Rockefeller also told Catholics that the commission would come out in favor of state aid to Catholic schools. Rockefeller, however, did not control the commission, and the majority report come out against aid.

Rockefeller's commitment to aid is so strong that last year he signed a $33-million bill providing public money to Catholic schools on the very day that the the U.S. Supreme Court ruled similar bills in three other states unconstitutional. This year, when a three-judge panel ruled the New York law unconstitutional, Rockefeller promised to find some way that would be constitutional.

He then signed a bill to provide tuition grants, graduated tax credits, and direct grants to nonpublic schools for repair and maintenance. The fate of that bill is bleak also. Three-judge federal courts in Ohio and in Pennsylvania have declared tuition grants unconstitutional; the repair and maintenance of sectarian schools is even more blatantly against Supreme Court standards for aid. The only outside chance for New York's new law is the tax-credit scheme. It will not, however, help the poor. Instead it will benefit the middle class, the very Catholic families that increasingly are abandoning the Catholic schools for nonfinancial reasons.

In recent cases involving public aid to nonpublic schools, the U.S. Supreme Court has argued that the very precautions the government would have to take to ensure that the aid would be used for nonreligious purposes would entail the kind of church-state entanglement that the Constitution prohibits. If no conditions are attached to the aid, on the other hand, the government would be acting irresponsibly by providing aid for potentially religious purposes. If conditions are attached, then the government would become excessively enmeshed in church affairs. Certainly, the imposition of any condition that Catholic schools must consolidate to be eligible for government aid would constitute such entanglement in the eyes of the High Court.

Many Catholic bishops, however, would welcome a government order to consolidate. They have agreed privately that consolidation is necessary but are reluctant to initiate such a move themselves. Many parishoners simply would ignore any church order to close their beloved—and inefficient—schools. After all, church leadership has been insisting all along that school closings signal the collapse of the system rather than its salvation. Now they're sunk in their own propaganda.

At times, they have tried to close inefficient schools in a systematic way. They have announced, for example, that they will close a certain school in three years. The few times they have announced this, however, the schools have closed the following September. The reason was panic. Panic on the part of Catholic parents who wanted a stable environment for their children, panic on the part of teachers who wanted a stable job.

It will be difficult for church leaders to abandon their rhetoric. For years the threat of massive school closings has been their trump card in the political game they have played for government dollars, and the politicians have bought this argument. President Nixon has referred to the "tragedy" that one Catholic school closes each day. In fact, the consolidation program needed to keep the Catholic school system alive would involve closing two or three schools a day.

The final myth is that, no matter how much it might cost to aid the Catholic schools, it would cost much more if most of the pupils now in those schools were transferred into the public school system. The fact is, however, that projected enrollment declines in most public elementary schools would make room for most transfers at a cost that makes this a viable public policy option. In New York State alone it would cost the taxpayers $415 million more in public aid through 1980 to keep Catholic schools operating at their current level than it would to absorb Catholic transfers into public schools.

Unfortunately, the policies of both the church and the politicians have been based on sincere misconceptions. They will be difficult to abandon. But the time has come to rapidly reorder public thinking on the future of Catholic schools. If the courts do rule that substantial public aid to nonpublic schools is unconstitutional—and they probably will—then the country must prepare for not only a 50 percent drop in Catholic school enrollment but a substantial phasing out of the system that now holds several million Catholic pupils. The public schools could absorb such an influx over the decade with adequate planning and preparation. But the myths and rhetoric that now dominate the Catholic school debate will lead only to collapse, dislocation, and severe overcrowding in the public schools.

To prevent this collapse, the Catholic leadership must begin immediate, massive consolidation of Catholic schools. At the same time political leaders must tell Catholics how much public aid they can expect over the decade. The remaining aid alternatives should be tested in the courts. Only then can church leaders be freed from their current state of uncertainty. Only then can Catholics confront the present-day value of their schools and decide how much they would be prepared to sacrifice to preserve them if large amounts of public funds are not forthcoming.

The Chairman. Thank you, Mrs. Flast, for a very fine statement.

Are there any questions?

Mr. Carey. Mr. Chairman.

The Chairman. Mr. Carey.

Mr. Carey. I would like to take this opportunity to welcome Mrs. Flast to the committee. She has made very able appearances before many legislative bodies, before the Congress, before New York State on behalf of her respected group of New York civic, religious, and civil rights groups which comprise the PEARL organization.

I am honored also that in New York City it is our tradition that we can disagree on certain matters and agree on others, and never have acrimony in debate aimed at resolving educational difficulties.

Frankly, my problem with your stand now is that if I had taken this statement and applied it to a number of other acts that have been passed by the Congress, acts which I consider to be very helpful educational programs, I would have had, in line with your statement, to oppose those programs.

I am referring to the Elementary and Secondary Education Act, Headstart program, and many other programs that have been enacted since 1960 which do make provision for the inclusion in their benefits of children of nonpublic schools.

Do you oppose all of those programs, or would you have me oppose them?

Mrs. FLAST. PEARL was not organized at the time that ESEA was passed. I would say probably most of the organizations within PEARL did oppose the ESEA provisions for aid to non-public-school children, yes.

I think we made the point at that time and since then that we had hoped, after it was passed, that the guidelines set down in the Congressional Record would be observed, that the moneys would be used to improve integration, to enable children of both public and nonpublic schools to mix together, to intermingle so as to have some benefit for our society, but we have not found this to be true in its implementation in New York, and we have opposed it.

Mr. CAREY. Let me explain why it is not true to the extent we hoped in Congress. The reason given by a number of distinguished panels which have examined the workings of title I is that by one device or another the authorities conducting the title I programs have managed to so draw the regulations and administrative procedures that almost all children of the nonpublic schools are not receiving their share of the benefits. This has been particularly true in New York State.

You cannot expect that those children will get together if those in charge of the programs make it impossible for the programs to reach the children they are designed to help.

This is not my appraisal of those programs. This is the appraisal of the distinguished commission appointed by the President, with membership decided by the Congress, to make the study. In a number of cases, New York has been criticized for failing to carry out the intent of Congress in the ESEA programs.

I regret that such a charge would be leveled at those who conduct our public school programs, because I have great respect for them. You do recognize those criticisms have been made?

Mrs. FLAST. Mr. Carey, I can tell you that at the time the proposals were first made for implementation in New York, we discussed with the then Superintendent of Schools, Dr. Bernard Donovan, the feasibility of having shared programs for the public and non-public-schoolchildren.

He told us that in his meetings with the nonpublic school administrators he found they were not at all interested in shared programs, that they wanted programs on their own premises, and that in many instances they said they would not permit their children to participate if the programs were held on public school or neutral premises.

Mr. CAREY. You are dealing with one complication, but I am dealing with the conclusion which most recently was drawn in the President's Commission on Aid to Schools. The panel concluded that the program did not work in New York because the authorities conducting the programs had not used legitimate efforts to get the programs into the schools with poor children.

I am not asking you how it happened, or why it happened. The fact is that ESEA as Congress intended, it has not worked effectively. Perhaps, had it reached those non-public-schoolchildren, as we intended, some of those schools you pointed to might not have closed because they would have had programs for the children.

Tuition credit aid is not the answer, because the schools that closed did not charge tuition. It is obvious to you and me as New Yorkers that is true. They did not charge tuition because they were in Bedford-Stuyvesant, they were in parts of Williamsburg and Greenpoint and Harlem, where the church could not charge tuition.

Mrs. FLAST. That is not so. Schools in New York City were not closed. The school closings I referred to were in the Fleischmann report about New York State.

Mr. CAREY. You say parochial schools in New York City have not been closing?

Mrs. FLAST. That is right.

Mr. CAREY. That is untrue. I will name you five, Assumption, Victory—five schools in the ghetto areas of Brooklyn closed within 3 years. Three high schools are closing this year. How can you come to the committee and state those schools are not closing?

Mrs. FLAST. The report of the city planning commission——

Mr. CAREY. I am being specific. Are those schools closing or not?

Mrs. FLAST. Then you are more familiar with it than I am.

Mr. CAREY. I think I am.

Mrs. FLAST. The reports I have read have indicated there have been no closings for financial reasons in the archdiocese schools of New York City.

You are talking about Brooklyn. I am no authority on Brooklyn. The State commission report indicated that the closings, or the reduction, the declines in enrollment, have taken place in affluent suburbs where the average tuition is $40 per year, and that this $40 per year in an affluent suburb is not what is determining the loss of enrollment in nonpublic schools.

Mr. CAREY. Mrs. Flast, I am not supporting this bill in order to contribute further options to people in the suburbs, who I think have a variety of options, and who, for reasons that I think are totally defensible, choose to send their children to one school or another.

I think the parents in the suburbs have opted to send their children to public schools because these schools are superior in many cases to the nonpublic schools.

I think the nonpublic schools in some of those areas should close or consolidate, as Dr. Gary has indicated, and not perpetuate the problem of insufficient funds, which is depriving some children of better education. We are in no disagreement on that.

My bill is aimed at the inner city. My bill is aimed at the continuance of options for those who, for lack of funds, have no other alternatives. That is why the credit is refundable to those who do not have tax liabilities.

I hope you can agree with this portion of the bill. I also hope that title I is acceptable to you, and I hope we can work under that title.

Those portions of the bill which will allow poor people who cannot afford to pay tuition to exercise their freedom of choice and freedom of options are, I think, defensible.

Would you agree on that?

Mrs. FLAST. No, we do not agree. We do not agree that all citizens should be required to pay for the religious education of some children, whether they be poor children or rich children.

It is a question of church-state separation, which has nothing to do with economics. There are many church groups which manage to provide religious instruction for their children outside of the regular day schools. Public schools are available to all children, and most of the poor children are in public schools, in any event.

Mr. **Carey.** Yes, but an increasing number of poor children would avail themselves of educational opportunities in nonpublic schools if they could afford it. Is that not true?

Mrs. **Flast.** What I have said is that an increasing number of people would opt for private education at all economic levels, if they could get something private for the same price that they get something public.

Mr. **Carey.** I am interested in the poor having as many options as possible. They have all too few options in New York State today.

Mrs. **Flast.** Mr. Carey, this is true of housing, this is true of every deprivation for the poor.

Mr. **Carey.** Exactly.

Mrs. **Flast.** Congress is not proposing that we eliminate all the differentials in the economic status of people of this country. Congress is only suggesting that preferential treatment be given for the purpose of supporting nonpublic religious schools.

Mr. **Carey.** How about the rent supplementation in many of the housing projects, which is cosponsored by religious groups?

Mrs. **Flast.** Do you really feel they are equivalent to middle- and high-income housing?

Mr. **Carey.** I am talking about housing for the poor. I would invite you over to see one in my district which was created for the purpose. It serves the poorest sectors of my district where rent supplements have made it possible to enjoy better housing. In fact, I think I should have you visit certain parts of my district. There is much I could show you.

An editorial in the New York Times explains as follows:

> The principle of separation remains an important principle for Church as well as State. The continued existence of the greatest possible variety of alternative nonpublic schools is essential to prevent public education from becoming an inescapable State-imposed monopoly. For this reason, it is in the public interest to make available to nonpublic schools limited assistance which does not violate the principle of Church-State separation because it does not make religiously controlled schools dependent on tax support for their operation.

How do you feel about that sentiment expressed in the New York Times editorial?

Mrs. **Flast.** I can show a lot of other New York Times editorials which have opposed every form of support for nonpublic schools.

Mr. **Carey.** This is a recent one.

Mrs. **Flast.** I understand that. They say stay within constitutional guidelines.

The U.S. Supreme Court has established the constitutional guidelines, and has limited support to very incidental services such as transportation and that kind of servicing to all schools, whether they be public or nonpublic.

We are talking about a tax credit which is used only by parents of children who pay tuition in a religious school.

Mr. **Carey.** You would favor, then, those programs according to the Supreme Court?

Mrs. FLAST. Which the Supreme Court has approved.

Mr. CAREY. Which are limited in their scope and have clearly secular purpose?

Mrs. FLAST. And applied to both public and nonpublic schools equally.

Mr. CAREY. If some assistance under those guidelines went to nonpublic schools, would you support or oppose it?

Mrs. FLAST. Mr. Carey, we support whatever the Supreme Court approves.

Mr. CAREY. I am pleased to hear that, because the Court upheld in the title I case the principle that not every aid to education is impermissible because some indirect benefit of a minor nature may flow to a religious institution.

That is a holding in the title I case. You had better look at that, also.

Mrs. FLAST. There are other reasons for that decision.

I will say this, Mr. Carey. The textbook loan law was referred to earlier today, and that was upheld by the U.S. Supreme Court because it was a law that applied equally to both public and nonpublic schools in New York State, and provided for lending of textbooks.

Mr. CAREY. For your information, the architect of that law is the architect of the tax credit program in my bill.

Mrs. FLAST. At the time the law was passed, there were many protections, guidelines, written in to protect against the purchase of sectarian textbooks for use in religious schools.

Mr. CAREY. Correct.

Mrs. FLAST. A study done by, or at least reported in the Yale Law Review some years ago indicated that an examination of the books which were purchased under this textbook loan law and in use in sectarian schools, religious schools, throughout New York State indicated that this absence of sectarianism was not true, that many books were being purchased which would not be acceptable in a public school which was carefully examining its books to eliminate sectarian bias.

Mr. CAREY. I certainly would oppose sectarian bias in publicly loaned textbooks. I am pleased there is a very fine ecumenical spirit working among church groups to eliminate from many of the books references which are historically inaccurate as to the role of minority and religious faiths in our society. That is a problem we all have to grapple with. We are working on that.

I was sent a request for help from a respected State official in New York, State Senator Garcia, of the 29th district. He has requested I give him assistance in helping get more than a score of programs for the support of Harlem Prep. The total amount of the programs he is seeking is $2,802,000 for the enrollment of Harlem Prep. It would come to more than $2,000 per student in Harlem Prep.

I understand Harlem Prep has begun a very worthwhile experimental program, an innovative program for children who, for one reason or another, are unable to pursue or finish secondary education.

Yet, this is money that could conceivably be diverted from public education funds.

Do you feel I should support this program and try to get funds for Harlem Prep, as Senator Garcia suggested, or would you, in line with your testimony here today, oppose those moneys for Harlem Prep?

Mrs. **Flast.** Harlem Prep is not a religious school.

Mr. **Carey.** But it is a private school.

Mrs. **Flast.** Yes, but it is not a religious school. Our opposition is based on first amendment principles of separation of church and state.

Mr. **Carey.** You would support public funds for private education if that private education is not church-related?

Mrs. **Flast.** I have not said that, because on that issue there is a division of opinion amongst the members of our groups.

There are public education members of our groups who would oppose aid to any nonpublic school, whether it be sectarian or nonsectarian. There are others who hold strictly to the first amendment principles and would oppose only aid which goes to a church-related school because of the infringement on religious liberty.

Mr. **Carey.** If we can make certain that the aid in this case is for that part of education which is limited to secular purposes, with no benefit to religion, and which in every way fulfills the guidelines set forth by the Court, then that would be the kind of aid you, or some of you, might conceivably support?

Mrs. **Flast.** In terms of religious schools, Mr. Carey, I think it has been demonstrated that there is no way of separating the secular from the religious teachings of sectarian schools. I think every religious leader I have ever heard speak on this, whether Catholic, Jewish, or Lutheran, has insisted the whole purpose of their schools' existence is to create a religious atmosphere in the teaching of all subjects so that their children will grow up with this kind of religious orientation. The purpose of a religious parochial or Jewish day school is not a secular purpose.

Mr. **Green.** I would like to ask a few questions.

Your statement is slightly misleading. It happens to be my belief that the religious parochial schools in the city of Philadelphia perform the full functions of education, and they are not really a thin disguise for some apostolic mission. The children are getting a full education.

There was a case which, frankly, I have not read, but unless my memory is failing me, I found very interesting along these lines.

Recently, the Supreme Court ruled the Amish children in Pennsylvania did not have to attend the public schools, that the law compelling them to attend the public school was unconstitutional because their religious beliefs were different than that.

Now, what I am wondering is whether a group like yours would approve of a concept reducing the taxes that people who desire to send their children to other than a public school now pay. In other words, if we said to people who apparently have a constitutional right now not to send their children to the public school, would it be acceptable to you, in no way aid any religion whatsoever, to allow those parents with children some kind of tax deductions?

Mrs. **Flast.** No, no. I am sorry. I think the whole theory of taxation is that all people are expected to pay for the public services which are available to all people. If we don't take advantage of the public services available to us, that is an individual choice. Everyone has to pay taxes for those public services which are available, which are set up for all people.

Mr. **Green.** I understand what you are saying.

You sort of hinged an awful lot of your testimony on the constitutionality or unconstitutionality of whatever plan we should happen to devise, and said, in addition that you would support any ruling of the Supreme Court, and if the Supreme Court ruled that a plan we came up with was, in fact, constitutional, as a plan like this, it seems to me, might be, you are saying you would not support that.

Mrs. FLAST. I don't see how this plan could possibly be deemed constitutional, when the tuition reimbursement plan of Philadelphia was found by a Federal court in Philadelphia to be unconstitutional because it did exactly what this plan does.

Mr. GREEN. I am just wondering, in light of that other Supreme Court decision that says all children don't have to go, that perhaps we could reduce—would you be against reducing the real estate tax burden for the elderly who have no children, when real estate taxes go to the support of public schools at this point?

Mrs. FLAST. Mr. Green, we don't isolate the taxes that are collected. I don't think in any level of our government do we do that. We don't pay taxes that are isolated and solely for public schools.

Do I agree that the poor and the elderly who are on fixed incomes should pay a lower level of taxes? Yes. I do agree with that. That has nothing to do with the issue about which I am talking today.

Mr. GREEN. I am not sure. I think there is a possibility here of coming up with a new area of thought which might be constitutional.

Mr. CAREY. Mrs. Flast, I wish I could find in your testimony some degree of sympathy for the job that people of many religious faiths and religious commitments are trying to do in pursuit of their belief of humanitarian aid to the poor. They are trying to extend to people in low income areas a variety of programs they feel will be beneficial in nonpublic institutions.

Mrs. FLAST. Mr. Carey, I think we do that. I think individually we make contributions to organizations that do provide——

Mr. CAREY. But organized assistance to education?

Mrs. FLAST. And organized assistance through organizations which have that as their main purpose.

Mr. CAREY. As soon as we call them a school, you oppose it.

Mrs. FLAST. When you talk about taxation of all citizens to support the religious beliefs of some, or religious beliefs they don't share, this is so totally contrary to the basic law of our land.

Mr. CAREY. That then, goes against the whole concept as you have heard today, of deductibility of contributions to churches. Do you oppose that, too?

Mrs. FLAST. Contributions that are deductible we have not taken a stand on, because it has not appeared to us that any legislation has been proposed.

Mr. CAREY. It is in the law.

Mrs. FLAST. I am saying this is an issue we have not touched upon, deductible contribution.

We know, as a matter of fact, for example, that in terms of those schools that don't charge tuition—I have a friend who lives in a very wealthy suburb in New York who has seven children in a nonpublic school, and does not pay a penny tuition, but he is told by the church which sponsors his school that he is required to make a certain contribution every month in order to support the education of his children in that school. That contribution is tax deductible.

Mr. CAREY. You had better warn your friend that is not the case. The Internal Revenue Service has been explicit on this point, that if moneys are raised in the name of contributions which are actually used for educational purposes, they are not deductible. I am afraid that you and your friend had better research that.

Mrs. FLAST. He and his church accept the benefit.

Mr. CAREY. May I suggest to you one of the reasons we are trying to move in this direction of explicit legislation which the Court can pass upon is because we want to avoid such plans or programs as you are describing here. We want to do it openly and give the Court an opportunity to pass on this question once and for all.

That is why I will labor as I did in the Elementary and Secondary Education Act, with all the expertise I can muster, from anybody who wants to contribute, to try to put together legislation which fulfills constitutional principles. If we are wrong, you and other organizations have an opportunity to contest this matter, as you have contested other matters.

I think you have to agree throughout the history of our country not one law federally enacted for the support of education, even though it extends to nonpublic schoolchildren, has been struck down by the Court. Is that not the record?

Mrs. FLAST. To my knowledge, the only law passed by Congress which aided non-public-school children was the Elementary and Secondary Education Act.

Mr. CAREY. The Headstart and school lunch programs aid nonpublic school children.

Mrs. FLAST. Oh yes. But Headstart was for preschool age children. The school lunch program we have not opposed. We have not opposed health facilities. We have not opposed medical, dental, the police, and fire protection laws. We are opposed to the use of public funds for the instruction of children in nonpublic schools.

Mr. CAREY. Again, thus far, no federally-enacted statute has been found by the Court to violate the principles of separation of church and state.

My commitment as a Congressman is never to advocate such a statute. I shall not. I make that commitment to you.

Mrs. FLAST. Mr. Carey, are you suggesting this bill does not violate the principle of separation of church and state?

Mr. CAREY. My name would not be on it if I felt it violated in any degree the separation of church and state. I will yield to no one in my dedication to the support of our public schools. My children attend both public and nonpublic schools. I support them all to the fullest degree possible.

I call attention to an inaccuracy in your statement where you say under provisions of H.R. 16141, the annual payment to public schools would be $50 per child and $150 per child in the private schools, and therefore the bill is disproportionate in its benefits.

The answer is that this is the only proposal we are making for aid to nonpublic schools. It would cost a maximum of $586 million, while the total moneys available to the public sector from public sources are in excess of $30 billion.

So I think that it is not quite fair to state just because this bill attacks two problems, namely, the crisis in nonpublic schools through the tax credit plan, and the crisis in the disequilibrium financing of districts in the country through the equalization procedure, that it does not do a fair job, pupil by pupil, in apportioning funds to nonpublic and public school systems.

Secretary of the Treasury Shultz said you have to look at the vast array of public funded programs that are available to the public schools and compare them with the modest benefits that we are trying to extend to some of the children—particularly low-income children—in the nonpublic schools.

So I would have to contradict that part of your statement that says the benefits are disproportionate.

Mrs. **Flast.** Mr. Carey, the financing of public education is a governmental responsibility. The crisis, financial or otherwise, of nonpublic schools is not a governmental responsibility.

This bill, according to the estimates of its cost, would provide anywhere from $115 to $150 per pupil for students attending religiously affiliated schools. I would make a prediction that in no time at all it would be $200, because as long as $200 is available, then tuition is going to go up.

We have found that with scholar incentive programs at the college level in New York State, the tuition met that scholar incentive upper limit.

The fact of the matter is that the public schools have no other source of income except that which comes from the taxpayers via our Government. The nonpublic schools do have private sources.

Mr. **Carey.** I thoroughly agree. I also agree that State and local sources have just about been exhausted as a source of support of our public schools.

There are many more inadequacies outside of New York State than in our own State, and we clearly have inadequacies in our school system.

That is why I am strongly supporting additional Federal aid for all the pupils in all the schools. The States cannot go along any longer. I am making the same plea for the children in the nonpublic schools. They cannot go along either.

I do not want those schools to be excessively bound to church institutions for their support. Many of these schools are now running under lay auspices, having moved away from the historical commitment to church and clergy, I want to encourage that so that there will be more independence in church-related organizations.

Fordham University, and a number of other universities, have broken away from the historical ties to clerical and church authority. I see that the same trend could also occur in the nonpublic schools.

That would be a healthy and vigorous development. Would you not agree?

Mrs. **Flast.** Mr. Carey, this is something for those religious adherents to determine for themselves. This is no concern of mine.

Mr. **Carey.** I would like to encourage that. I think it would be a healthy and vigorous thing if these schools could be more independent. They cannot be more independent if they have to depend on the church treasury.

Mrs. **Flast.** They should depend on their own people, not on the rest of us.

The **Chairman.** I want to thank you again for your very fine appearance. You have impressed all of us.

Mrs. FLAST. Thank you, Mr. Chairman.

The CHAIRMAN. Our next witness is Mr. Franklin D. Hochholzer.

STATEMENT OF FRANKLIN D. HOCHHOLZER, ON BEHALF OF PRESERVE OUR PUBLIC SCHOOLS, AND FOX RIVER VALLEY AND MILWAUKEE CHAPTERS, AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE

Mr. HOCHHOLZER. I want to thank the committee for their time. I represent Preserve Our Public Schools. My name is Franklin D. Hochholzer. I have law offices in Fairfax, Va., and Neenah, Wis.

The Preserve Our Public Schools, a Wisconsin citizen organization, and the Milwaukee and Fox River Valley Chapters of Americans United for Separation of Church and State were not able to appear today. They asked me if I would appear for them briefly and submit the statement which I have submitted and let the committee be aware of their feelings in regard to H.R. 16141, and that they are opposed to the bill as written.

There are very few statements I will make.

Wisconsin residents are familiar with parochial aid tax credits. Our grassroots organizations, comprised of unpaid volunteers, have worked for the defeat of a number of bills which have been introduced in the past two sessions of the Wisconsin Legislature. There were tuition grants, various "payment for secular services" proposals, and lastly, tax credits. None have passed.

In March of this year, 26 Republican and 24 Democratic Assemblymen voted against tax credits. Of these, there were 11 Catholics, 15 Lutherans, and 22 others. What was significant was the strong opposition from members of the two largest religious groups which operate parochial schools—Catholics and Lutherans.

The organizations that I represent in Wisconsin feel that this type of legislation would encourage the proliferation of parochial schools and private schools, creating what they call a dumping ground for the public schools, and that it would encourage the demise, perhaps, of the public schools.

They further would draw attention to the fact that this type of legislation would be extensively costly to the Treasury. There is ample evidence that our Federal Government cannot afford this drain.

From the State of Wisconsin alone, with almost 200,000 children currently enrolled in private schools, the loss of Federal revenue under this plan would exceed $40 million.

There is currently afoot apparently in this country from political scientists, and apparently sociologists as well, and you will note in my statement Dr. Maurice Eisendrath, president of the Union of American Hebrew Congregations, was quoted recently in the Madison, Wis., Capital Times as saying that aid for religious education "will see America converted into a religiously compartmentalized society with religiously oriented political parties turning America into a frenetic cockpit of religious discord and bitterness."

There are a number of political scientists and sociologists that are supporting this theory at this time.

Since you have the reports that Milwaukee and Fox River Valley Chapters of Americans United have prepared, I don't care to take any more of your time. The record will note that they have appeared here, and they have made their wishes known to the committee.

The CHAIRMAN. Without objection, your entire statement may be inserted in the record, if you wish to do it that way.

Mr. HOCHHOLZER. Thank you.

The CHAIRMAN. Without objection, it will be included.

(The complete statement follows:)

STATEMENT OF FRANKLIN D. HOCHHOLZER, ON BEHALF OF PRESERVE OUR PUBLIC SCHOOLS (POPS), AND MILWAUKEE AND FOX RIVER VALLEY (WISC.) CHAPTERS OF AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE

I am Franklin D. Hochholzer, speaking for Preserve Our Public Schools (POPS), a Wisconsin citizen organization, and for the Milwaukee and Fox River Valley (Wisconsin) Chapters of Americans United for Separation of Church and State. We are opposed to Title II of H.R. 16141 and all other proposals for aiding parochial and private schools by means of tax credits.

Wisconsin residents are familiar with parochial aid tax credits. Our grassroots organizations, comprised of unpaid volunteers, have worked for the defeat of a number of bills which have been introduced in the past two sessions of the Wisconsin legislature. There were tuition grants, various "payment for secular services" proposals, and lastly, tax credits. None have passed.

In March of this year, 26 Republican and 24 Democratic Assemblymen voted against tax credits. Of these, there were 13 Catholics, 15 Lutherans, and 22 others. What was significant was the strong opposition from members of the two largest religious groups which operate parochial schools—Catholics and Lutherans.

Polling his constituents this year, Wisconsin's Sixth District Congressman William Steiger found 62% opposed to government aid for private and parochial schools, and polls by state legislators in other areas of Wisconsin produced similar results (Soik & Sensenbrenner, NE Milwaukee; Peloquin, Chippewa Co.).

Last year, the Milwaukee School Board, backed by the PTA, turned down a proposal to participate in the OEO's so-called Voucher "Experiment", to provide full public funding for nonpublic schools, recognizing that it would have taken money from the public school budget and turned it over to parents who could afford to send their children to any private school.

We have opposed all attempts to force the public to support private and religious education, however clever or indirect the scheme. Of all the proposals put forward by the parochial aid lobby, the tax credit scheme is the most insidious.

If you wanted to insure the demise of public schools in this country, no surer way could be found to do it than by paying parents not to use them.

If enacted, H.R. 16141 will create a whole new class of "welfare recipients" and set a new precedent for giving away millions of public dollars for private use, with no proof of need.

It will encourage all private schools that do not now charge tuition (and most Catholic and Lutheran grade schools do not) to institute tuition up to the limit of the tax credit.

It will spur the creation of countless additional private schools by every dissident political, religious, racial and social group—all at the taxpayers' expense and with no public accountability.

It will fracture the public interest in public schools to the point where their very survival will be questionable.

It will divide the American people even further, this time along religious lines.

Religious groups will be lobbying endlessly in every session of Congress for more and more money. If there is enough pressure to pass this legislation now, there will be enough pressure to increase the credits annually. In Wisconsin, we have been told by many state legislators who opposed parochial aid that they have had their future political careers threatened and many have been subjected to personal harassment and intimidation by religious groups eager for public money.

Further, if Congress passes tax credit parochiaid legislation, pressure will be increased in state legislatures to do likewise.

Let no one be fooled for an instant. Under this scheme, the parents are merely the conduits through which public money is channeled to Churches for their schools.

There is no evidence that the parents involved cannot afford private schooling. There is not even an attempt to compel them to prove need. When personal income is at an all-time high and parents can afford many other luxuries, religious education seems to be low on their list of priorities.

There is no evidence that private religious schools need financial assistance. We know that the operators of parochial schools have spent millions lobbying for parochial aid, state by state, and nationally. Shouldn't these millions have been spent to support their own schools?

There is no evidence that private schools do a better job of educating than public schools, because no valid comparisons can be made between public schools that must accept all children and private ones that eliminate slow learners, discipline problems, truants, disinterested, and others who don't conform to their admissions standards or teaching methods.

As long as private schools are selective, and public schools remain the dumping ground for the children the private schools don't want, public schools will never be able to compete.

There is ample evidence that our federal government can't afford this drain on its treasury. From the State of Wisconsin alone, with almost 200,000 children currently enrolled in private schools, the loss of federal revenue under this plan would exceed $40 million. How will you make up this revenue loss, except by raising taxes, cutting other needed programs, or putting this country even further in debt.

It is never pleasant to see the handwriting on the wall. The highest Court in the land, as well as federal courts in Pennsylvania, Ohio, and Vermont recently have warned on the political divisiveness along religious lines which would result from the enactment of such special interest legislation. Many others across this nation have recognized the danger.

Dr. Maurice Eisendrath, president of the Union of American Hebrew Congregations, was quoted recently in the Madison, Wisconsin, *Capital Times* as saying that aid for religious education "will see America converted into a religiously compartmentalized society with religiously oriented political parties turning America into a frenetic cockpit of religious discord and bitterness."

We hope our elected representatives will have the wisdom and foresight to turn down all these tax credit proposals.

The CHAIRMAN. We will have to recess until 2 o'clock this afternoon. I regret this fact, but we do have to go to the House floor.

We will reconvene at 2 o'clock in this chamber.

(Whereupon, at 12:40 p.m., the committee recessed, to reconvene at 2 p.m., the same day.)

AFTER RECESS

Mr. GREEN (presiding). The hearing will resume.

It is a great pleasure for me to welcome to the committee at this time both Msgr. Francis B. Schulte, superintendent of schools of the Archdiocese of Philadelphia, who is our next witness, and Congressman Joshua Eilberg from Pennsylvania. I know all the members of this committee are acquainted with Mr. Eilberg.

The Archdiocese of Philadelphia educates about one out of every three children in our city in 270-odd elementary schools and 31 high schools. I think that we on the committee and in government could learn a great deal from the system, which the Monsignor runs, which educates our children at about half the cost of our government-run public school in the city.

We could also learn from him that we face a very serious crisis. In the last few years, the parochial school enrollment in the city of Philadelphia decreased by about 50,000. Those students are now attending public schools whose costs are almost double and where financial problems are equally catastrophic.

Today we have a man before us who has great expertise and talent and is dedicated to helping others, and I want to extend the warmest welcome to him, the warmest welcome of this committee. I might also mention the Monsignor has a tremendous reputation as a debate coach.

I would now like to recognize Congressman Eilberg and Monsignor Schulte and ask that they come forward to the witness table, and Congressman Eilberg will have the pleasure of introducing the Monsignor.

Mr. SCHNEEBELI. I would like to take this opportunity to welcome my friend from Pennsylvania. I am sure the Diocese of Philadelphia has contributed greatly to the fine education in the city of Philadelphia. I used to live in Philadelphia. It is not only quantity but quality education as well. I am very happy that you have come here because we need the help of the best of both sides to give us their best expressions and best opinions on this very important subject, and I welcome you here, and I am glad you came.

STATEMENT OF HON. JOSHUA EILBERG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. GREEN. Congressman Eilberg, you are recognized.

Mr. EILBERG. My colleagues, my good friend in the Chair, Mr. William Green, it is my pleasure to introduce to you Msgr. Francis B. Schulte, superintendent of schools of the Roman Catholic Archdiocese of Philadelphia.

Monsignor Schulte has been responsible for the education of more than 200,000 children for 2 years. He knows what it means to have to get by on as little money as possible.

As head of one of the largest private school systems in the Nation, Monsignor Schulte has an intimate knowledge of urban and suburban schools and the students they serve.

He knows how badly the assistance provided in this bill, which I am proud to cosponsor, is needed.

I am sure that his testimony will make it clear to everyone concerned that our private school systems are a vital part of our Nation's educational program and that the bill's provisions must be approved if these schools are to remain open.

I thank you for giving me this opportunity to introduce Monsignor Schulte.

Mr. GREEN. Thank you. I know of your great interest in the parochial school system, and we are indeed delighted to have the monsignor appearing before our committee today.

Monsignor, you are recognized.

STATEMENT OF THE VERY REVEREND MONSIGNOR FRANCIS B. SCHULTE, SUPERINTENDENT OF SCHOOLS, ARCHDIOCESE OF PHILADELPHIA

Monsignor SCHULTE. Thank you, Mr. Green.

I appreciate this opportunity of speaking before the Ways and Means Committee. Copies of my testimony have been distributed to the committee. Rather than reading through the entire document, I would like to take a few moments to highlight some points.

Mr. GREEN. Without objection, I will enter the entire text of your testimony at this point in the record, and you may proceed as you wish.

(The statement follows:)

STATEMENT OF MONSIGNOR FRANCIS B. SCHULTE, SUPERINTENDENT OF SCHOOLS ARCHDIOCESE OF PHILADELPHIA

SUMMARY OF TESTIMONY

Catholic schools make an important social and educational contribution to the total educational effort of the Philadelphia area. These schools also have a most significant financial impact on educational costs in the area. The contributions of Catholic schools have been widely recognized, most recently by the Gurash Report.

In recent years, Catholic schools, along with most American schools, have faced rapidly increasing costs. More and more of these costs have been met by rising tuition. This increase in tuition is limiting the availability of this form of nonpublic education and placing greater and greater burdens upon poor and middle class parents.

Relief for these parents in the form of tax credit legislation is urgently needed. Such legislation would be wise public policy for our nation.

TESTIMONY

I am Francis B. Schulte, Superintendent of Schools for the Archdiocese of Philadelphia. Under the general supervision of this office are 279 parish elementary schools, plus 4 special schools, and 31 diocesan high schools, educating altogether 223,000 students. (These figures are exclusive of the private Catholic schools and Catholic colleges and universities in the Archdiocese.) The territory of the Archdiocese includes the City of Philadelphia and the four surrounding counties—Bucks, Chester, Montgomery, and Delaware. Almost 60% of these students are in Catholic schools in the City of Philadelphia. About 15% of the city students are from minority groups, and more than 20% of these are non-Catholics.

Decreasing enrollment and increasing costs

The Catholic schools of Philadelphia are facing an increasingly serious financial crisis. A brief look at enrollment figures over recent years will provide us with some understanding of the situation. In 1964–65 our schools in the five counties served some 271,379 pupils in contrast with last year's enrollment of 223,000, a decline of some 48,000 students.

These enrollment figures are related undoubtedly to steadily rising costs in education. A tradition of little or no tuition in the schools of the Archdiocese of Philadelphia had produced a uniquely democratic clientele over the years. As recently as 1965-66 high school "tuition" was $20; today the charge to each student is $300 a year, in addition to $150 per student from the parishes. Only in this last school year was tuition officially introduced into the elementary schools, so that, until very recently, there was no financial deterrent to the exercise of parental rights in education, and rich and poor alike were accepted into our schools as a result of the outstanding sacrifice of our Catholic people and friends.

Today, however, with the steadily rising tuition, we are faced with the distasteful specter of becoming less democratic, less "Catholic",—forced more and more to a position of being open only to those who can afford to come to our schools.

City and suburban schools affected

The Report of the Gurash Committee, recently completed and made available to this Committee, indicates that operational costs of Catholic schools in the city and suburbs will rise astronomically by 1976. The picture of many Catholic schools in the City of Philadelphia is one of deteriorating buildings, empty classrooms, rising tuition, and enormous debt. These conditions have already begun to limit freedom of parental choice in education.

The financial crisis of the Catholic schools affects the public schools' financial problems. Unfortunately, many Catholic schools serving families least able to absorb any added costs are located in the center of a large public school system which is itself struggling under the threat of bankruptcy. One out of every three children in the City of Philadelphia attends Catholic school. Unless immediate, substantial aid comes to these schools, both public and nonpublic schools will find their mutual problems gravely intensified.

In suburban areas of the Archdiocese the two-pronged debt factor of newer school buildings and families laboring under the costs of resettlement likewise limits parental freedom of choice in education. Those parents who continue to struggle to keep their children in our schools experience the added burden of increased school taxes to enable the public schools to absorb the transfer of their neighbors' children.

State and federal legislation over the past few years has provided various kinds of supplementary assistance to our schools. Valuable as these materials and services are, they do not touch upon the basic burdens of salaries and other operational costs. More and more, our schools must depend on tuition charges which cannot do otherwise than increase drastically.

Social and educational contributions of Catholic schools

The Gurash Report, to which I referred briefly, is the work of a group of outstanding leaders in our community—Catholic and non-Catholic, business and professional people. Their independent study of our schools encompasses the social contribution of our schools as well as their present financial need. The Report stresses the important role played by Catholic schools in the total educational effort of the Philadelphia community and lists the following considerations:

1. Education encompasses the entire spectrum of social political, and spiritual values that are part of the fabric of life in a free society.
2. Catholic and other parochial schools are committed to an educational philosophy involving morals, conduct, and spiritual as well as intellectual excellence.
3. The American tradition of educational diversity has been a great strength to our educational system and should be preserved.
4. The individual citizen's right to choose the kind of education which he wishes his children to have is an important right and should be preserved.
5. Catholic schools are a stabilizing factor in the life of our urban communities.
6. The example set by the Catholic schools of efficient and economically constructed and operated facilities is also important.
7. In addition to the foregoing, the resources committed to supplying Catholic education in the Philadelphia area provide this community with:

    A quality education for one out of three children in the City of Philadelphia and comparable numbers in the four surrounding counties;

    An important source of a skilled labor force and an educated citizenry;

    A source of community and business leaders;

    A full range of student activities which provide educational, social and recreational services to the community at large and develop in the students themselves a sense of social responsibility;

    Substantial facilites and personnel to undertake the education of minority groups and the poor. This aspect of social contribution of Catholic resources was prominently noted by President Nixon in his Message on Educational Reform, March 3, 1970, in which he comments: "They offer a wider range of possibilities for education experimentation and special opportunities for minorities, especially Spanish-speaking Americans and black Americans."

    These resources exist today and present potentially a powerful instrument for social awareness and change. The resources so committed should be conserved along with our other national resources.

    The community stake—both economic and social—is high. Independent of full acceptance of the benefits claimed or value judgments implied, the Catholic and other nonpublic schools of the Philadelphia community are a substantial factor to be reckoned with and assessed.

8. There exists between the public and Catholic schools of Philadelphia a large measure of interdependence, cooperation and interaction.

Financial impact of Catholic schools

The major findings of this Committee in the financial area may be summarized in these words:

1. By 1975 the deficit in the schools of the Archdiocese will reach $55.4 million.
2. Costs will continue to spiral due to:
    - (*a*) Rising teacher salaries;
    - (*b*) Decline in availability of Religious teachers;
    - (*c*) Inproving (declining) student/teacher ratios.

3. Despite all these pressures, costs in the Catholic schools will remain substantially below the public school system when measured on the basis of cost per student.

4. The Catholic schools of the five counties represent a saving of more than 800 million dollars a year in operating costs alone, not to mention the housing of the children.

Freedom of choice in education

Finally, I would like to reaffirm our belief in the primary rights of parents in the education of their children. As was stated in the Wall Street Journal of December 8, 1970, in a letter to the editor, written by E. Earle Ellis, of New Brunswick Theological Seminary: "Is it not understandable that the religio-philosophical framework of current public education is for many Christians and Jews confessionally offensive? The state's use of the taxes of such people exclusively for public school represents a two-fold infringement on their religous liberties. First, it is a discriminatory distribution of tax aid to one kind of educational structure, one that is confessionally objectionable to them. More seriously, it forces such persons of moderate income to send their children to these schools whatever their confessional preferences may be. It needs to be stated again, loud and clear, that whatever proper educational requirements the state may make, the primary rights in educating a child belong to the parents—not to the state."

Conclusion

Based on my observations and experience as Superintendent of Catholic Schools in a large metropolitan area, I urge prompt action on legislation to provide some relief in the form of tax credits for parents of children attending nonpublic schools.

Monsignor Schulte. I want to speak to the committee about children, hundreds of thousands of children in the Catholic schools of our city. These are children and teachers together trying to teach and to learn in an atmosphere of constant crisis—constant crisis due to the financial uncertainty in which our schools, public and nonpublic alike in Philadelphia are forced to limp along. While I speak particularly of the children in the Catholic schools in the city of Philadelphia and the four surrounding counties, I am acutely aware of the national problem of education which is not just a problem of just the one sector of education but affects public and nonpublic alike.

We are very fortunate in Philadelphia to have a fine working relationship between the public and nonpublic school systems not only at the board level and the administration level but all the way down to the neighborhood schools.

The Catholic schools in Philadelphia are facing an increasing financial crisis which I am sure is replicated in urban centers across the land. In Philadelphia, we have had a tradition in years gone by of little or no tuition. That tradition which has gone by the board, unfortunately, in the last few years had produced a uniquely democratic clientele in our schools over the years. As recently as 1966, the high school tuition in the diocesan high schools was only $20; today the charge is $300. We are not sure that can be maintained. This is in addition to the $150 per student received from the parishes and also in addition to school fees that the students pay. Only in the last school year was tuition officially introduced into the elementary schools. Until very recently, there was no financial deterrent to the exercise of parental rights in education. Rich and poor alike were accepted into our schools as a result of the outstanding sacrifice of our Catholic people and their friends.

Today, however, with steadily rising tuition, we are faced with the distasteful specter of becoming less democratic, less "Catholic"—

forced more and more to a position of being open only to those who can afford to come to our schools.

The report of the Gurash committee, recently completed and made available to this committee, indicates that operational costs of Catholic schools in the city and suburbs of Philadelphia will rise by 1975, to a deficit of $55 million. The picture of many Catholic schools in the city of Philadelphia is one of deteriorating buildings, empty classrooms, rising tuition, and enormous debt. These conditions have already begun to limit freedom of parental choice in education.

The financial crisis of the Catholic schools affects the public schools' financial problems. I cannot stress that too strongly. Unfortunately, many Catholic schools serving families least able to absorb any added costs are located in the center of a large public school system which is itself struggling under the threat of bankruptcy. Unless immediate substantial aid comes to these schools, both public and nonpublic, schools will find their mutual problems gravely intensified.

In suburban areas of the archdiocese, the two-pronged debt factor of newer school buildings and families laboring under the costs of resettlement likewise limits parental freedom of choice in education. Those parents who continue to struggle to keep their children in our schools experience the added burden of increased school taxes to enable the public schools to absorb the transfer of their neighbors' children.

State and Federal legislation over the past few years has provided various kinds of supplementary assistance to our schools and has been of genuine help. Valuable as these materials and services may be, however, they do not touch upon the basic burdens of salaries and other operational costs. More and more, our schools must depend on tuition charges which cannot do otherwise than increase drastically.

I understand that Mr. Gurash presented his report to this committee. I would not review it at this time but simply emphasize a few points that his committee stressed.

One point is this: The Catholic schools in our urban centers, particularly in the city of Philadelphia, are a very important stabilizing factor in the community.

The Catholic schools in our city have provided substantial facilities to undertake the education of minority groups and the poor. This aspect of social contribution of Catholic resources was prominently noted by President Nixon in his message on Educational Reform of March 3, 1970. He said these schools "offer a wider range of possibilities for education experimentation and special opportunities for minorities, especially Spanish-speaking Americans and black Americans".

The third point that Mr. Gurash stressed in his report, and I would like to reiterate this again, the close cooperation that prevails in our city—and which I heard this morning in this hearing room is evidently not repeated in some other urban centers throughout our land—between the Philadelphia public and nonpublic schools. The Catholic schools of the five-county area represented by our archdiocese in southeast Pennsylvania represent a saving of more than $653.6 million over the next 3 years in operating costs alone not to mention the housing of the children in the schools.

An important issue that needs to be addressed, I believe, by this committee and by the Congress is this issue of freedom of choice in education. E. Earle Ellis of the New Brunswick Theological Seminary wrote in the Wall Street Journal of December 8, 1970:

> Is it not understandable that the religio-philosophical framework of current public education is for many Christians and Jews confessionally offensive? The state's use of the taxes of such people exclusively for public school represents a two-fold infringement on their religious liberties. First, it is a discriminatory distribution of tax aid to one kind of educational structure, one that is confessionally objectionable to them. More seriously, it forces such persons of moderate income to send their children to these schools whatever their confessional preference may be. It needs to be stated again, loud and clear, that whatever proper educational requirements the state may make, the primary rights in educating a child belong to the parents—not to the state.

In summary, based on my observation and experience as superintendent of Catholic schools in a large metropolitan area, I urge prompt action first on the part of this committee and then of the Congress on legislation to provide some relief in the form of tax credits for parents of children attending nonpublic schools. I would consider this wise public policy for our Nation and justice for its citizens.

Mr. Green. Thank you very much, Monsignor Schulte.

Do you wish to add anything at this point, Congressman Eilberg?

Mr Eilberg. No; I do not believe so.

Mr Green. We have been holding these hearings all this week so far, and there has been testimony time and time again with part of which I have taken dispute. Some reports or studies seem to show that it is changing parental tastes which is causing the decline in parochial school enrollments. From my point of view, in Philadelphia that does not seem to be the case. It seems clearly a case of unaffordable tuition forcing them to take their children from the parochial schools and to place them in the public schools.

In your judgment, what is the chief factor? Is the financial factor the chief factor in the trend that we see in the decline in the number of children in parochial schools?

Monsignor Schulte. I think there is a combination of factors involved. The number of children registering in all schools, public and nonpublic alike, is stabilizing or declining slightly, so I understand. That would be one consideration. Families move to different areas within our diocese and they may not find schools as readily accessible as they would in Philadelphia.

Then there is the financial factor. You make the point very well. The financial factor is the most critical factor for the poor and middle-class families, the families that have shown the greatest inclination to choose public or nonpublic schools in our area. They are the ones particularly affected by the tuition. Enrollments have dropped more rapidly in the higher income areas of the Archdiocese of Philadelphia. In the city of Philadelphia we have many people who are poor, very, very poor and of limited means, middle-class and lower middle-class people with a number of children who wish to attend nonpublic schools but are unable to do so. There are a number of factors involved, but I think you are right in identifying the financial factor as particularly important in the city of Philadelphia.

Mr. Green. I have two children who are attending private schools in the city and, frankly, they are expensive private schools. I don't know that I should be entitled to the kind of tax deduction provided by this bill. Do you favor some kind of limit, so the deduction applies to people in the lower middle-income brackets, rather than to those who would be getting some kind of tax credit for sending their children to very expensive private schools?

Monsignor SCHULTE. I have not studied that particular aspect of the question carefully. My immediate response—and that would have to be weighed against more careful study—is that I would favor a limitation based upon the income of the parents selecting the expensive, private school.

What I am most interested in seeing is tax relief for low- and middle-income people. If it is necessary to place a limitation on parents in the upper income brackets, my first response would be "Yes: I think that would be justified."

Mr. GREEN. My personal opinion is that whatever we do, we have to do within the confines of the U.S. Constitution. I presume you agree with that.

Monsignor SCHULTE. Yes.

Mr. GREEN. My second inclination is this should not be a bonanza to wealthy people getting an expensive education for their children.

My third approach, and I would appreciate your comment on this, is that if we are not careful, we could be setting up some kind of mechanism which could contribute toward discrimination along racial lines. I do not think that should be done.

Monsignor SCHULTE. That should not be done and any legislation must be carefully drawn so that that does not happen, but this very legislation itself would have, at least in our diocese, the effect of promoting integration in our nonpublic schools, increasing numbers of minority group children, particularly black and Spanish speaking. It would have the effect of increasing the number of children we would reach.

Mr. GREEN. Mr. Vanik.

Mr. VANIK. Would that mean you would be able to preserve and perhaps extend your intercity service?

Monsignor SCHULTE. Yes; it would.

Mr. VANIK. By maintaining facilities and increasing new ones?

Monsignor SCHULTE. Maintaining present enrollment and, depending upon how the legislation is treated by the courts afterward, taking additional children into the schools. As it is now, we have space in many of our innercity schools. We have children who would like to come to us. We cannot afford to take them. We could increase our service; yes.

Mr. GREEN. Mr. Schneebeli.

Mr. SCHNEEBELI. On that same point, I notice 15 percent of your students are from minority groups. I presume from what you have been saying this is the first group among your casualties when you increase your tuitions. The minority groups drop out earlier as your tuition increases?

Monsignor SCHULTE. I am not sure if that is true in any greater proportion. Possibly throughout our entire diocese it would be about the same proportion.

Mr. SCHNEEBELI. I would think most of your minority groups are in the innercity rather than in the suburban areas.

Monsignor SCHULTE. That is correct.

Mr. Green. This is a guesstimate on my part, but I believe because of increased efforts by the archdiocese, I would be surprised to find minority enrollment has not risen. Is that not actually the case?

Monsignor Schulte. That is true. Over the last few years we have lost more white students in absolute numbers. I am not sure if that applies to black students in the same proportion because we have an increasing number of black non-Catholic children who are choosing to come to our schools. This is true as Mr. Green points out. We have increased the number of black children.

Mr. Schneebeli. Is 15 percent rather large for a Catholic school system?

Monsignor Schulte. Yes, it would be large because the black Catholic population of our diocese is nowhere near 15 percent, although it is the black population of our schools.

Mr. Schneebeli. Thank you very much. I think you have made a very substantial contribution and you are to be commended on the great system you are running not only from the point of view of the economics but also the concern that you have for the poor and the middle-income groups and the minority groups. I think it is very fine. Thank you very much.

Mr. Green. Mr. Vanik.

Mr. Vanik. Thank you, Mr. Chairman. I was wondering whether the monsignor could comment whether to his knowledge the situation he describes in Philadelphia would be analogous to Cleveland, Chicago, Detroit, and other large cities. I am talking about the financial situation you have outlined. It is pretty much identical in all of the large urban areas of the country; is it not?

Monsignor Schulte. Yes; I would think it would be. The one point I heard this morning in this room—in New York, there is evidently a lack of cooperation between the public and the nonpublic schools. I don't know if that is repeated in other cities, but in Philadelphia there is a very close working relationship, and the two boards are very close together.

As far as financial need is concerned, I am sure they face the same need.

Mr. Vanik. In the Cleveland area, we have a fine, cordial, smooth-working relationship between our two systems. I think that characterizes most of the systems throughout the country.

Mr. Green. I think when former Mayor Dilworth became chairman of the board of education there seemed to be an increasing working relationship.

Mr. Schneebeli. I have seen it work both ways.

Mr. Green. I should know the answer to this question, but I don't. Were you part of the Gurash Commission study?

Monsignor Schulte. No; no Administrators in the archdiocese were members of that committee. The committee was composed of business leaders, professional leaders, labor leaders in the city. It was a citizens' committee.

Mr. Green. I did not ask the question to make the point that the commission was independent, but it was, and I know it. Nonetheless, you could have been one of many members and still have maintained its independence. Another question, and this is a question I asked Mr. Gurash the other day and also Mayor Dilworth when he came down here as president of the board of education, what is the great disparity in the amount of money necessary to educate a public school child in Philadelphia when compared to the education of a parochial school child? Is it teaching?

Monsignor SCHULTE. There are a number of factors. Salaries of religious reachers are much lower, of course, than the salaries of public school teachers. Our faculties are still comprised of about 50 percent religious teachers. The salaries of many of our lay teachers are not as high as the salaries of the Philadelphia public school teachers.

The operational costs of our schools would be smaller, lower, and some of the supportive service we would like to have available we are not able to provide. There is a big difference in the size of the administrative staff between the large urban public school systems and the size of my staff, for instance. I think the combination of these factors would probably account for the difference in operational costs.

Mr. GREEN. I do not want to put you on the spot and perhaps you do not want to comment on this, but is this public school system staff too large?

Monsignor SCHULTE. I will not comment on that. I will say mine is too small.

Mr. GREEN. Are there any further questions?

Mr. SCHNEEBELI. In your regular public school operation, what are normally teachers' salaries?

Monsignor SCHULTE. I am not sure.

Mr. SCHNEEBELI. I know yours is considerably less. Would it be as much as 50 percent of the total cost?

Monsignor SCHULTE. I would think it would probably be 50 percent, but I am not sure.

Mr. GREEN. Are there any further questions?

Thank you once again, monsignor, and Congressman Eilberg.

Our next witness is Mr. Paul Tractenberg who is a member of the steering committee of the Public Funds for Public Schools of New Jersey. We welcome you to the committee, Mr. Tractenberg, and you may proceed as you wish. We have a copy of your statement. If you wish to enter it into the record at this point, we would be happy to do so, or if you wish to give it orally, we would be happy to have you do that.

STATEMENT OF PROF. PAUL TRACTENBERG, PUBLIC FUNDS FOR PUBLIC SCHOOLS OF NEW JERSEY

Mr. TRACTENBERG. I would like to give the statement substantially as it is written and then I have some points I would like to make.

First, I appreciate very much the opportunity to appear before this committee on behalf of Public Funds for Public Schools of New Jersey. I appear in order to express and stress some concerns over the proposals in H.R. 16141 particularly with regard to the authorization of tax credits to the parents of private and parochial school children.

I was interested to hear Congressman Green's statement a moment ago expressing some of the same concerns our organization has.

The organization, incidentally, Public Funds for Public Schools of New Jersey, is a coalition of 19 civic, educational, and religious organizations. They are listed on the last page of my testimony. The combined membership of these organizations exceeds 336,000. It includes a variety of citizens of the State of New Jersey. There is one common bond which unites the member organizations and that is that they share the belief that the American system of free education is essential to our democratic form of government and to our economy. We are committed to every child's right to a free public education without discrimination or selectivity and with adequate resources to permit every child to become a productive citizen.

Therefore, in general, we are opposed to any diversion of scarce public funds to nonpublic schools.

Let me add that we do support the right of parents to choose private, State-certified education for their children. However, this in no way implies a right to have such private education supported by the public. This is especially so since the Federal and State Governments have clearly recognized their responsibility for providing a free public education for every child without regard to race, religion, economic level, or social status. Certainly private schools which do set up barriers along these lines do not serve the general public and, therefore, ought not receive tax funds from the Public Treasury.

We believe that the public schools, serving a wide diversity of children across the country, educating together rich and poor, black and white, slow learner and gifted, have made a tremendous contribution to the American culture. The fact that these schools are now reflecting the ills and problems of our society ought not be a reason to condemn them and support alternative kinds of schools. Rather, we must all, legislator and private citizen alike, seek ways to strengthen and support our public schools, whose unifying force is needed now more than ever before.

Having said that, let me turn to some specific comments about H.R. 16141.

Public Funds for Public Schools of New Jersey commends the authors of the proposed bill for their effort to expand Federal aid to public schools and, therefore, we support the concept of title I. Our reason for testifying, however, is our strong oppostion to title II, which I will touch upon, and the testimony from here forward will deal with title II of H.R. 16141.

First of all, in view of the numerous safeguards and conditions written into title I, I think it is noteworthy so few are included in title II. I think, unfortunately, in the short summary released about the bill, there is a statement which is subject to being misinterpreted which describes some of the safeguards, because title II itself contains no language which would provide safeguards along several lines, which I will mention.

For example, title II unlike title I contains no nondiscrimination provisions. This raises great concern for us that Government's support of private education under this title could effectively favor segregation of many types: racial, religious, economic, and social. We believe that such Government support of private education does irreparable harm to our Nation's citizens by widening the gaps among them.

Despite claims of integrated student bodies, the facts are that, across the country, less than 3 percent of the pupils in nonpublic schools are black. I think the facts on a nationwide basis seem rather clear. That is, facts that we have had access to suggest, as I just said, that 3 percent of the pupils in nonpublic schools are black across the country. I think that suggests a discrimination in the administration of private education which ought not to be financed by public treasury funds. Ironically, many of these public dollars come from taxpayers whose children would be effectively barred from admission to the private and church-operated schools being supported. I think under those circumstances, the use of Federal funds for private schools cannot be justified.

Mr. GREEN. I do not like to interrupt you but you have sort of interspersed your comments with some of the things you said we had to say, and if we could have that kind of dialog it would be helpful. You are right that title II contains no easily readable nondiscrimination provisions, but title II applies only to schools which qualify under the Tax Code, 501(c) (3), and organizations which do get that exemption have to be placed into that kind of position. There is a requirement that no discrimination can exist before they can get that kind of recognition under the Tax Code. While it does not appear that there are specific provisions in title II to enforce nondiscriminatory status, the fact is that it is written in indirectly.

Mr. TRACTENBERG. I think it is interesting to compare titles I and II back to back.

Mr. GREEN. It does not apply to 503(c)(3) organizations as title II does.

Mr. TRACTENBERG. There is another respect in which I believe title II is discriminatory in a somewhat different sense. As I have seen the bill and the summary of the bill, under title I of the bill, public school children are provided with an average subsidy of $50 per student while private school students under title II would receive a tax credit of $200 per student. Needless to say, a tax credit is equivalent in its effect on the Federal treasury to an outright grant of funds. I think those two amounts within the parameters of the same bill suggest a bit of a difference in treatment.

While this coalition that I am speaking on behalf of believes it is not the business of government to subsidize private education at all, I think we find that particularly suspect when done at the apparent expense of the public schools.

Mr. CAREY. May I be allowed to interject a point? You are addressing a point made by a previous witness. I think you summed it up well when you said, "within the parameters of the same bill." I am perfectly willing, if the coalition wishes, to give not one additional cent to the nonpublic schools. But if you want to maintain some proportion "within the parameters of the bill," we would just multiply the equalization factor by five. That figure is the amount recommended as what would be needed for purposes of equalization.

The Secretaries of the Treasury, HEW, and others have said that you have to examine the whole broad scope of public schools. Even if we granted the full amount of tax credit, it would still be much less than 10 percent of the moneys available to the public schools. If you are not opposed to the $200 credit, then we can simply multiply title I by a factor of two, three, four, or five, within the parameters of the same bill, to maintain a proportion that you would support. Since you are not supporting any moneys for the nonpublic school system, why do you drag in the red herring of the proportion in this particular bill when you know there are other moneys available to public schools? I demand fairness when you appraise a bill in that light.

Mr. **Tractenberg.** I think you would start from the assumption the public sector, in this case the Federal Government, may indeed owe a somewhat greater responsibility to the public education system.

Mr. **Carey.** But not necessarily within the parameters of the same bill. Would you agree? It is a multiplicity of aids to public schools we could recognize.

Mr. **Tractenberg.** I think it is a particularly revealing thing when one focuses on a bill that sets out to aid both private and public schools.

Let me turn to another aspect which concerns me, and I gather has concerned Congressman Green, among others, and that is the view of our coalition that it ought not be the function of Government to finance the private education of children whose wealthy parents willingly choose to pay upwards of $1,400 yearly to exclusive academies. I think this draws attention to another failure of title II to provide safeguards in the use of public moneys, for there is no maximum income limitation. Thus, tax credits would be available to high-income parents of private school students at the expense of the poor and middle-class taxpayer.

According to some figures which were provided to Congressman Carey by Laurence N. Woodworth in an August 2, 1972 letter, $232 million of tax credits under the bill would go to taxpayers with adjusted gross incomes of more than $15,000 and $100 million of tax credits would go to taxpayers with adjusted gross incomes of more than $20,000.

Indeed, $11 million of tax credits would even reduce the tax payments of those with incomes of over $50,000. I think that the spectacle of our public schools, urban, suburban and rural being starved for funds while the country's wealthiest taxpayers get federal tax credits for sending their children to the Andovers, Exeters and other elite prep schools is startling to say the least.

I am also confused by the effect of the bill at the other end of the income spectrum. Although the material distributed about the proposals before this committee states at page 15, and I quote: "The credit will be fully refundable, and accordingly will be paid to an individual whose tax liability for the year is less than the credit to be made available," title II itself incorporates no such provision. I just do not find any provision which makes that explicit. There may be an explanation derived from the tax code that I am not familiar with. At least on the face of title II, there seems to be no provision for this refund to taxpayers whose incomes would be less than $200 or less than the greater amount if they had more than one child in private school. If there is no provision in a body of law which would accomplish this, I think title II as now written would create the possibility of a low-income taxpayer who pays $200 or more in private school in tuition in effect receiving less from the Government than a middle- or upper-income tax credit who has a greater liability and can offset the full amount of the credit.

I think another serious failure of title II is the absence, in the judgment of the coalition, of any restriction on the use of tax credits for religious schools. Although the omission of such cautions may be an attempt to avoid the free exercise clause, the eloquent silence in this regard raises serious questions under the first amendment's establishment clause. The Federal judiciary has struck down many forms of public aid to sectarian private schools recently, and it is a well-established principle of law that one may not do indirectly what he is forbidden by law to do directly.

I think there are very serious constitutional issues which I don't think it makes sense to go into now which would be raised by a tax credit arrangement that went without limitation to religiously based schools. Instead, I want to focus on another issue to point out another element of the situation, and I think it is worthy of the committee's consideration.

According to information which the committee itself has provided, there are at least 136 bills pending which would provide tax credits and/or deductions for private elementary or secondary education. We recognize that the Government is under tremendous political pressure to enact increasingly more legislation to aid parochial schools. This is true, and I should point out it is obviously not only at the Federal level but State level in virtually every State in the Nation. We as an organization resent the notion of government by pressure group. Indeed, this kind of pressure has legal constitutional ramifications. One of the principal concerns that has been expressed recently by the Federal courts, including the Supreme Court, about public funding of private schools has been the political divisiveness caused by it.

At this juncture, I think it would be helpful to clarify the nature of that pressure, and I would like to use some figures which have been released by the New Jersey-based organizations.

Based on figures released jointly this year by Jerseyites for Non-Public Education and the New Jersey Catholic Conference, 94 percent of all nonpublic school students in New Jersey attend Catholic parochial schools, and only 6 percent attend other denominational and private schools. Some of these are high-priced academies which, although currently receiving tax funds, are not the schools which have been requesting State and Federal support throughout the years.

I would like to call to your attention something which earlier witnesses may have already called to your attention.

On January 11, 1972, this year, the National Association of Catholic Laity released a year-long study of church financial reports. It found that:

> 1. Catholic bishops are collectively spending over $6 million a year in lobbying efforts designed to obtain tax support for Catholic schools.
> 2. By presently only "chancery" or central office accounts in their financial reports, the bishops have excluded any accounting of the total income and assets of over 18,000 Catholic parishes.

I think it would be interesting to question at this point whether this lobbying effort on behalf of Catholic schools would disqualify them from their present tax-exempt status, and thus would disqualify such schools under the provisions of title II. It would be interesting, in fact, to know whether this lobbying effort has taken place in the dimensions recited by this substantial report. As I said, it might tend to disqualify the Catholic schools from their present tax-exempt status and by doing so disqualify themselves for support under the provisions of title II.

This report of the National Association of Catholic Laity rated the Dioceses of Trenton and Newark, in New Jersey, along with other communities throughout the country, as: "Refusing to make a financial disclosure to their membership and to the general public." You are now considering as a committee the appropriation, in the form of revenue loss, of at least $584 million of the public's money for, among other things, the religious schools affiliated with these dioceses.

During the time that pressures were being exerted for additional aid to private and parochial schools——

Mr. GREEN. May I interrupt you there. Ordinarily we don't interrupt a witness when he is presenting his statement but this has bothered me, and it is difficult when a witness presents 15 points to remember all of them until he completes his statement. So, I think if we allowed for this kind of dialog it would be better.

I do want to point out that, in the Diocese of Philadelphia, one thing that was done, the entire diocese was opened up for the Garush report that you have referred to several times today. I think it was commendable that it was done, and I suggest it ought to be done in other places.

Mr. TRACTENBERG. In all fairness, I should point out that the National Association of Catholic Laity found 78 diocese were quite open about their financial status, and I assume the Philadelphia Diocese was among them, but there have been some which have not been quite so open. That is a point of some serious concern particularly as the Federal Government considers——

Mr. GREEN. I did not want to leave the impression as the testimony had a tendency to do that this was somehow universal.

Mr. TRACTENBERG. I think it is important, and I would like to commend to your attention some of the following points, because the coalition I represent would like to urge your serious consideration of some of the following suggestions:

During the time that pressures were being exerted for additional aid to private and parochial schools, a major study of New York's 1,900 nonpublic schools concluded that "the State must anticipate the phasing out" of at least 70 percent of Roman Cathoic elementary schools and 50 percent of Catholic high schools by 1980, and must prepare to absorb many of the students into public school systems.

This was a report done by the Fleischmann commission in New York. You may well have had much more elaborate testimony of this report or others like it than I am prepared to provide you with. I think it is interesting and I know you made reference to it earlier that this report among others attributed a projected drop of 55 percent in Catholic enrollment in the 1970's, to falling birth rates and changing Catholic tastes rather than to rising tuitions.

I certainly can't speak from personal experience either in general or particularly regarding the Philadelphia situation but I understood the monsignor to say, if I understood him correctly, that enrollment has fallen off more in the upper middle-class served by the diocese than lower income groups which would tend to suggest some of these factors other than financial factors may play at least an important role in the enrollment situation.

The Fleischmann commission in reacting to this report developed recommendations which I would hope to commend to the attention of this committee because what the Fleischmann commission suggested was that there be no additional aid to nonpublic schools. Instead, it called for transition aid which would go to the public schools to help them accommodate children transferring from private institutions. I think this is a very serious problem which I hope we all recognize.

As parochial and other private schools may, for whatever reason, consolidate and close down, there is going to be an increased burden on the public schools which the public schools will certainly need some assistance in dealing with.

The approach of the Fleischmann commission suggested no additional aid to nonpublic schools, but, instead, for broad transition aid to public schools to help them accommodate students transferring from private institutions.

In view of the projected decline in Catholic school enrollments, the report recommended carefully planned school closing, consolidations, and staff reductions. The report went on to say that neither present levels of State aid, nor substantial new State assistance that might be constitutional would probably prevent the collapse of nonpublic schools. It further warned that current aid might only intensify the financial crisis by encouraging the Catholic church to keep many schools open.

I should point out that the word "collapse" is their term, not mine.

I think if Catholic parents throughout the country as well as in New York State are experiencing changing tastes, the findings and recommendations of the Fleischmann commission may be strikingly appropriate for consideration by this committee.

Finally, in connection with this, I want to turn to a specific proposal of our coalition.

We respectfully and strongly suggest that this committee seriously consider and hopefully adopt the recommendations of the Fleischmann commission. We believe it is entirely appropriate for public officials to offer transition aid to those public schools which need help in accommodating students who transfer from private institutions.

We believe, on the other hand, that it is highly improper and of dubious constitutionality for public officials to attempt to encourage any religious group to keep its schools open by offering varying types of direct and indirect aid to these schools.

The cost to the public of transition aid would be far less, administered only where needed, than general aid to nonpublic schools and their students, administered across the board throughout the country.

In conclusion, our members are deeply concerned that passage of title II would set an undesirable precedent not only for the Federal Government but for the State governments as well which have, after all, been searching rather diligently for constitutional ways to pass on to parochial and other private schools public funds. Certainly if the States followed the precedents of title II, it would result in further diversion of public money to the private sector, and we fear the eventual establishment of a dual system of education throughout the country sanctioned and funded by the Federal and State Governments. In our view, such a separation could hardly improve the quality of education and would create unconscionable divisions within the population. In our view, again, our Government must not create such additional areas of conflict and division among its people.

Dr. James B. Conant expressed it concisely when he said:

> To use taxpayers' money to assist private schools is to suggest that American society use its own hand to destroy itself.

Finally, we are further concerned that the amount of the tax credit proposed in title II is just the beginning, and that as more and more aid is granted to private schools, the average taxpayer will have to bear the ever-increasing financial burden. As a corollary, we must assume that this proposed bill will encourage the establishment of tuitions where none now exist, plus the raising of tuitions in line with the expected tax credits, which in reality transfers public tax funds to nonpublic schools.

Therefore, we must respectfully urge this committee to maintain its commitment to the basic principles of public education by passing title I of H.R. 16141, and to reject the inappropriate commitment to public funding of private and religious school education by defeating title II.

Thank you.

Mr. GREEN. Thank you very much. I appreciate your coming today.

On of the things you just said hits upon something about which I have been concerned. Would you favor a current maintenance effort kind of provision? Of course, you would not prefer the bill at all. I am cosponsor of the bill. You have commended me for a few things. I just don't want you to overdo that because I am cosponsor of the bill and which I think some have said is needed.

What you are really suggesting is that this committee preside over, and assist in, the dissolution of a pluralistic school system which we now have and consolidate it to the point where we are going to have nothing but one system which, under most State law, all children are forced to attend.

Mr. TRACTENBERG. No, I think there is evidence which I have seen and find rather compelling that suggests—and I have not seen the studies which deal with every system—that many systems and particularly those in New York State and New York City are experiencing a decline in enrollment and a consequent consolidation not largely because of financial problems but largely for other reasons.

I think for the Federal Government to try to prop up a system which perhaps with all considerations of efficiency ought to consolidate would be unfortunate.

Mr. GREEN. This just dawned on me. I have been sort of wracking my mind all week for different solutions. Maybe we could call this the bridge theory which would be something like this: Public funds are used to pay for the construction of bridges. We could call it the toll road theory maybe. Public funds are used to pay for the construction of toll roads. The tolls are charged only to those people who use the toll roads or bridges. Should we in effect require those using the schools to actually pay more for the support of the schools than we ask of our other citizens?

For instance, there is a tremendous burden placed on the backs of parents who wish their children to get some kind of sectarian education or training while they are in school. I think that the initial responsibility for the education of a child belongs with the parents. Would you oppose some kind of, let us say, added user fee or charge, or whatever, for those who attend public schools, so that the entire burden of supporting two systems does not fall upon those who wish to exercise some kind of religious belief and freedom in this country? I understand they are not doing this voluntarily. They are paying double.

Is there some kind of compromise like this that an organization like yours could favor? Do you understand what I am getting at?

Mr. TRACTENBERG. I think it creates a very practical—

Mr. GREEN. Let me develop it in my own mind and we will get back to you.

We heard this morning, and I think it is very true, the public supports the jails of the country but very few of us want to use them. We are not going to charge a user tax for people to use jails. It won't work that way by the theory that the public should pay for what it is allowed to take advantage of along the lines of a bridge. Would that be unconstitutional in your opinion?

Mr. TRACTENBERG. I was going to say it seems to me at first blush that it would raise substantial practical problems because I think our experience in public schools has been that increasingly they wind up with the part of the population in many areas that cannot afford to send children to some sort of private or parochial school. I think then to say these people then, in addition to having been left behind because they can't afford to pay tuition elswehere going to be asked to pay an additional burden in tax dollars is not realistic. I don't think there is any way you can squeeze that amount of blood out of those stones.

I would rather focus on some inequities in the financing of the public schools. I think there are many people who are asked to pay disproportionate burdens including parents of children in parochial schools but through the great reliance on the property tax. I am invovled in New Jersey in some litigation attacking the school finance system. I think the Federal Government must play a role if that situation is to be resolved. I know Commissioner Marland has made proposals or made statements expressing his view that the Federal Government ought to ultimately, and hopefully ultimately means fairly soon, should be supporting 30 percent of public education. I believe if that began to happen, and if the States individually rationalized their own systems for raising funds so that property owners were not under the tremendous burden of subsidizing the public schools that we would receive many people who thus far have been supporting virtually unsupportable burdens and we would be in a much better position. I have in mind, for example, retired people who have retired to a home on a fixed income and are taxed on a continually rising basis against the value of that property, yet who have very little income from year to year with which to pay the taxes. I think that is a severe problem if we focus on inequities in the way in which education is supported in this country. I don't know if I would say it is a more severe problem or not. I would really have to think about the suggestion you have just made or somehow that there should be an added payment for people who use the public schools. My initial reaction is it would not work because of the economic level of many people whose children are in school.

Mr. GREEN. I think two-thirds of the people in Philadelphia who send their children to public schools would be negative. I am just trying this out because I am interested in seeing that we provide aid for these schools, but I take the whole question of Constitution, separation of church and state, the whole matter of civil rights, the equitable distribution to the wealthy who are not allowed to take advantage—as you say, I think there is something ludicrous about Government support for the Exeters and the Andovers and perhaps even the school my child attends.

Are there may questions? Mr. Carey.

Mr. CAREY. I have searched through your testimony and the colloquy for a constructive note that indicates some concern for the children of poor families who are in the nonpublic schools, and who may be left alone in those schools by the movement to the suburbs of more affluent families. I found nothing positive in any thing that you have said which could be helpful to us in finding some assistance to those particular families.

I would be delighted if I thought your testimony indicated supporting the $18,000 income cutoff suggested by the administration. If you find that a weakness in the bill is that the credit could be used by the more affluent taxpayers for the payment of tuition for their children, then that is not a great barrier. We could resolve that simply. But note that the bill, H.R. 16141, is a vastly improved rate structure over the previous bills which dedicated the moneys in the larger amounts to the more affluent parents. We have tried to move in that direction with that formula. But if you find the absence of an income cutoff offensive, and I might agree, we could place a cutoff in the final bill. If I thought your support would win support for the bill I would recommend—and the administration recommends—cutoff. I find it difficult, however, when a respected authority from a great institution such as Rutgers University School of Law pins his views to those expressed by the Chief Justice, Mr. Burger, on the ground that if an organization, group, or individual decides to propound his beliefs, to press for the understanding of those beliefs, that creates divisiveness in our country and should be discouraged. Couldn't that same thing be said of the Southern Christian Leadership Conference? You know, to try to get equal rights for black persons and chicanos, and so forth, in this country is extremely divisive. Do you think they should desist so there should not be a divisive element in this country trying to secure rights for those people?

Mr. TRACTENBERG. So far as I know, the Southern Christian Leadership Conference is not in the market for any funds.

Mr. CAREY. The Southern Christian Leadership Conference has received the tax deductible money and comes forth to this forum to press its very valid case. You know that is how they exist. They come before legislative bodies seeking redress for the grievances that have too long been suffered by their people. That is in the nature of the democratic system.

Are you in accord with Justice Burger's belief, and I am asking you this in your capacity as a respected lawyer, that groups which believe they are honestly entitled to redress their grievances before the Government should not do so on the ground that it is divisive?

Mr. TRACTENBERG. I think one has to separate it. Certainly nothing I have said——

Mr. CAREY. Address the principle. Do you believe the group should desist because the views it expresses are divisive?

Mr. TRACTENBERG. In some cases; yes.

Mr. Carey. You said the Catholic Church is spending money for this purpose and should not do so.

Mr. Tractenberg. What I am suggesting is that courts have been consistently laying down as one of the guiding principles in first amendment cases that if the situation, the relationship is likely to give rise to political divisiveness, that is ample evidence——

Mr. Carey. As a colleague in the law, I might note that the notion has only been expressed by one justice, Justice Berger. Where does that principle appear other than in the dictum in this *Lemon* case?

Mr. Tractenberg. There is a host——

Mr. Carey. Name one.

Mr. Tractenberg. There is a *United American* against *Okey*.

Mr. Carey. The court expressed the same notion as Justice Burger?

Mr. Tractenberg. The *Ohio* case, the three-judge district——

Mr. Carey. Stating?

Mr. Tractenberg. Absolutely.

Mr. Carey. That that is a ground for the decision?

Mr. Tractenberg. Absolutely. There is a district court decision in New York State, *Pearl* against *Nyquist* and *Pearl* against *Rockefeller*.

Mr. Carey. Stay with the Supreme Court.

Mr. Tractenberg. These are Federal courts within New York State.

Mr. Carey. I am trying to point to the Supreme Court of the United States. If we can't stick to that, we won't get together.

Mr. Tractenberg. I agree the Chief Justice of the Supreme Court has stated that political divisiveness recited by public funds——

Mr. Carey. Might result——

Mr. Tractenberg. Might result in unconstitutionality.

What I am saying is that at least four Federal courts that I am aware of have taken that advice by the Chief Justice and have decided cases on that basis.

Mr. Carey. Let's proceed along that line. Your organization is supported by a number of organizations which participate in the benefits of tax deduction.

Mr. Tractenberg. That is right.

Mr. Carey. You are here doing what? You are here pressing the Congress for the adoption of your viewpoint; am I correct?

Mr. Tractenberg. Fine, but we don't stand to gain financially from your acceptance of our viewpoint.

Mr. Carey. You are a pressure group; are you not?

Mr. Tractenberg. We are here to provide information to the committee.

Mr. Carey. Could you be defined as a pressure group?

Mr. Tractenberg. I suppose it depends on how you define pressure group.

Mr. Carey. Could you be so defined?

Mr. Tractenberg. To the same extent as the diocese of Philadelphia.

Mr. Carey. I suggest if they are in danger of losing their tax exemption, then you are in the same boat with them if you press this point.

In an argument which should center on the benefit of education, since the Congress is grappling with this problem in both the public and the nonpublic sectors, why do we have to drag in this notion, which I find to be somewhat less than dignified, that if these bishops and rabbis continue to act as pressure groups, they might be in danger of losing their tax exemptions? Isn't that a form of pressure group intimidation? Do we need that? Does that turn on this argument here of how to assist children?

Mr. TRACTENBERG. The only concept I am dragging in is the concept you pointed out that the Chief Justice of the Supreme Court dragged in before I ever did.

Mr. CAREY. I don't think the Supreme Court has gone as far as to suggest that if groups come before Congress on behalf of legislation we ought to consider removing their tax-exempt status. You are suggesting that in your testimony. You have gone a little far afield from the dicta of the Court.

Mr. TRACTENBERG. I believe the history of the Tax Reform Act of a couple of years ago is replete with Congress' concern about organizations engaging in lobbying activities.

Mr. CAREY. We may have a change in that regard.

Again, if it would help to get your support for some concept of aid to the poor children of the nonpublic schools, we might consider placing a limitation on the tax credit so that it could in no event exceed a specified ceiling, or perhaps a specified percentage of tuition or any tuition increase over a period of 2, 3, 4, 5 future years. Such a limitation would not encourage an increase in tuitions or encourage any accretion of funds to religious or other institutions. Do you think such a limitation like that would be helpful?

Mr. TRACTENBERG. I think it might not cure it but it might be helpful.

Mr. CAREY. We might look upon that kind of limitation.

Mr. TRACTENBERG. I would like to respond to the assumption that it is poor children who are really the recipients of this bill. I think it was interesting to me that the monsignor indicated although the percentage of black students enrolled in the parochial schools in Philadelphia is 15 percent, that is vastly in excess of the percentage of black youngsters who follow the Catholic faith which suggests to me that many of the black students in the inner city Catholic schools are not there because they have religious faith which is being pursued there, but, rather, they think in certain situations parochial schools and other private schools may provide a better education for them than the public schools. If that is factually correct, as I believe it is, that seems to me all the more evidence for why the public schools have to be improved.

Mr. CAREY. I am coming to that. Until those schools are improved to the satisfaction of the black, non-Catholic parent, would you force him to stay in school? The parent has the responsibility to have the child educated in the best possible way. Wouldn't you suggest that until we can improve the quality of education in the public school——

Mr. TRACTENBERG. That is true now.

Mr. CAREY. If a parent finds a better form of education, are you going to suggest he should not be given help because he takes that option quality which is available now?

Mr. TRACTENBERG. I think if this practical effect of giving him that option is to keep the public schools in a more or less permanent state of disarray, I think one would have to make a difficult decision.

Mr. CAREY. Would it bring some support to this legislation if we added additional options? This Congress is not without ingenuity in solving problems of constitutional aid to public school children. Those words are a paraphrase of Ted Sorenson when he was in the White House as Counsel to President Kennedy. Many times President Kennedy was cited as being opposed to Federal aid to children in nonpublic institutions. He stated again and again that he was opposed to aid to religious institutions or schools. It was Mr. Sorenson who said on behalf of the President that Congress is not without ingenuity. Since you are in favor of a bill to provide transitional aid to assist the public schools as they assume additional burdens with the closing of nonpublic schools, let us say that you had a twin option in such a bill which would allow the parent the use of the $200 credit for the nonpublic school. I want to explore this with you.

Suppose a parent wants to afford his child the highest quality of education available. We might also provide that for the transitional period—1, 2, or 3 years—when the parent moves his child from a nonpublic school to a public school, an amount equivalent to the tax credit for the nonpublic school be remitted to the public school.

Mr. GREEN. If I may interrupt for a moment, would the gentleman from New York take my place in the chair. I have to leave in a moment.

Mr. TRACTENBERG. I probably ought to make explicit what I hope has been implicit, and that is as I respond to these questions I really am speaking personally and not on behalf of the organization.

Mr. CAREY. We understand that. These are impromptu colloquys and you could not possibly review this with the members of your organization. You are a respected authority in your field and you speak from great experience. I was wondering what your personal opinion would be if we increased the options of the bill. Suppose the parent who is getting the credit suddenly decided, for good reason, that he wanted to avail himself of the public school system. The same amount of tax credit that was formerly available to him as the parent of a nonpublic school child could also be made available to him during the time of transition from the public to the nonpublic and public school. What is your opinion of a child-by-child impact in such transfer cases?

Mr. TRACTENBERG. It almost goes without saying that since the statement supports the notion of transitional aid to public schools, anything that moves in that direction would be what I would personally believe would enhance the appeal of the bill. It still does not deal with the constitutional issue which I suppose after all if the bill passes would have to be in something like its current form and will have to be decided by the courts. I continue to have reservations about that option. I think that anything that rationally provides needed funds to the public school system is something to be encouraged. I really believe that the Federal Government has been somewhat remiss in the extent of its aid to the public school system generally throughout the country.

Mr. CAREY. Isn't there a public policy, developing in this country since 1960, and more pointedly since 1965, a policy that has been endorsed by the incumbent President, the presidential nominee of the Democratic Party, and 136 Members of the Congress, which states that the provisions of existing elementary and secondary education law allow children in nonpublic schools to receive benefits in some form? Does that not seem to be the formation of a public policy that the Court should recognize?

Mr. TRACTENBERG. I think so. It depends on how far the Court is prepared to say that that support is legitimate and constitutional. The line is being drawn from the U.S. Supreme Court down and there are certain issues including the tax deduction area that have not finally been decided.

I think we can all speculate based on our personal experience, our reading of the decisions of the courts how the courts in some future time may come out. I don't think any of us are sufficiently clairvoyant to know.

Mr. CAREY. Unless there is objection, I would like to submit for the record the opinion of Professor Spiers of the Office for Educational Research, Notre Dame University, on the issue of constitutionality of tax credits. Unless there is objection, the statement will appear in the record at this point.

(The statement referred to follows:)

TAX CREDIT PROPOSALS MEET COURT'S CONSTITUTIONAL CRITERIA

(By Dr. Edward F. Spiers)

Income tax credits for parents of children in nonpublic schools passed their first legal test in the nation. The decision was handed down in a Minnesota state court in July.

Hailed as a landmark decision the Minnesota tax credit law, under which one year's benefits have already been allowed, was called the first of its kind when it was passed last year.

The ruling comes as state after state embrace the tax credit concept of aid and as both the Republican and Democratic leadership push for action at the federal level to develop a tax credit plan. Similar plans have already made their appearance in Louisiana, Ohio, California, and Illinois. Several other states have bills pending. In the current Congress, 39 tax credit proposals have been introduced in the House and two in the Senate.

All this action within one year of the Supreme Court's *Lemon* and *DiCenso* decisions rejecting as unconstitutional aid, Pennsylvania's purchase of nonpublic school teachers services and Rhode Island's salary supplements for such teachers, may seem surprising.

However, the lengthy decision written by Chief Justice Burger in those two cases, while striking down specifically the methods before it, went to some length to admit that there are permissible forms of aid, and even outlined some do's and do nots.

After citing many favorable decisions of the Court relating to assistance, Burger wrote a further word of encouragement:

"Our prior holdings do not call for total separation of church and state; total separation is not possible in an absolute sense . . . judicial caveats against entanglement must recognize that the line of separation, far from being a 'wall', is a blurred, indistinct and variable barrier depending on all the circumstances of a particular relationship".

In the Lemon and DiCenso rulings, Burger made clear what the present Court found offensive to constitutional law in the Pennsylvania and Rhode Island plans of aid: (1) direct subsidies of tax monies to the schools; (2) continued government surveillance to implement the plans would occasion "excessive entanglement" of government with religion in the operation of church-related schools. ". . . we conclude that the cumulative impact of the entire relationship arising under the statutes in each State involves excessive entanglement between government and religion".

The First Amendment's reference to church-state relations is a brief 16-word passage: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof . . ."

Opponents to any aid to nonpublic school parents have so capitalized on the phrase "separation of church and state," that most Americans, unaware of the actual clause assume, that somewhere in the Constitution or its Amendments, there is a lengthy statement about walls of separation. Awareness of this, seems to cause the Chief Justice to lament:

"The language of the Religion Clauses of the First Amendment is at least opaque, particularly when compared with other portions of the Amendment."

In some proof of the point that instead of a wall there is only a thin line "a blurred, indistinct and variable barrier," the Court, on the same day that it rejected the Pennsylvania and Rhode Island plans of aid for elementary and secondary schools, found construction grants unobjectionable for nonpublic colleges and universities, many of which are church-sponsored institutions. This seeming contradition was explained that, in judgment of the Court, the degree of entanglement here was not excessive.

The 18-member President's Commission on School Finance, headed by Neil McElroy, was in the final stages of its two-year study at the time the Court issued its Lemon-DiCenso decisions and comment. Apparently taking its cue from the Court, this Commission in its major recommendation for nonpublic schools, expertly bypassed the constitutional problem of direct aid to such schools, and suggested substantial financial assistance by state and federal governments to nonpublic school parents and children in the form of either tax credits, tax deductions, tuition reimbursements, and scholarship grants. The report was handed to President Nixon in March.

One month later, the Panel on Nonpublic Education, a four-man subgroup of the full Commission, made its report to the President as originally mandated, and recommended specifically the route of federal income tax credits as the most viable method of financially aiding parents of children who attend nonpublic schools. Members of the panel based their judgment on advice received from constitutional experts who had carefully studied the Lemon-DiCenso Tilton decisions and had reviewed all existing programs of state and federal assistance.

Constitutional lawyers quote the Walz ruling of 1970 as a clear indication that tax exemptions and deductions are constitutional. In that case the Supreme Court upheld permissibility of tax exemptions for churches, synagogues, and houses of worship, and said there is a fundamental and constitutional difference between tax exemptions or deductions and direct grants of public funds.

The proposal recommended by the Panel would allow parents an income tax credit of 50 percent of tuition paid to a nonpublic school, with a maximum credit of $400 per child, provided the school is accredited and observes the regulations of the 1964 Civil Rights Act. It also includes a provision which gradually phases out the credit when a family's adjusted gross income exceeds $25,000.

At a news conference in June, President Nixon gave his endorsement to tax credit legislation and said he would include such a proposal in the major tax reform package he plans to send to Congress next year. "I am committed," he said, "to that (relief for nonpublic school parents) and the approach of tax credits in this area will be included in the proposal." Chairman Wilbur Mills of the House Ways and Means Committee is co-sponsor of one such measure with Rep. James Burke. Rep. John Byrnes, ranking GOP member of Ways and Means, and House Minority Leader Gerald Ford have sponsored similar legislation. By August, 41 bills on tax credits have been introduced in Congress. While they differ in details, all of them have the same purpose: help these parents financially by giving them at least some tax credit for their educational expenses. Otherwise freedom of choice in education will be a thing of the past for low and middle-income families.

Tax credit, except for educational expenses, is not a new idea. The Federal Government currently permits credits for a variety of reasons, such as, for retirement income, for business investments, and for certain types of foreign taxes. The Government does this, not out of a spirit of generosity to the taxpayer, but for the common good.

The State allows, for example, large corporations like General Motors credit for business expansion. Theoretically a loss in Federal revenue is incurred in granting such credits. Actually, through the creation of more employment by the expansion, government income is increased in succeeding years throuth taxes received from such corporations and their employees. The Government is not concerned whether the business is building automobiles, or publishing atheistic, not to mention theistic tracts.

Another example is the credit granted to retired persons. Here the purpose is to help senior citizens remain self-supporting. The common good is achieved by keeping retirees from ever-increasing relief rolls which cause higher taxes for everyone. The Government is not concerned whether the retiree lives in a home operated by a religious organization, or in one owned by a group of ardent atheists.

Supporters of tax credits for expenses paid to nonpublic schools advance similar reasoning. A limited, reasonable amount of tax credit, they say, will help parents who wish to have their children attend such schools. The Supreme Court in the 1925 Pierce case rules that parents have this right but today many of these parents are financially unable to exercise it.

Educational tax credits will be for the common good. The preservation of any group's constitutional right benefits every citizen. The economic gain to the nation is obvious; it is more sensible to encourage parents to send children to nonpublic schools with the help of a $200–$300 tax credit, than to send them to public schools where the average cost is about $900 per pupil. It must be remembered that in the nation's largest cities, urban areas where the supply of money for public schools is shortest, costs are the highest, and problems are the greatest, here nonpublic students make up a much larger proportion than their national 10 percent. Thirty-seven percent of the elementary pupils in Milwaukee attend nonpublic schools, in Philadelphia 34, in Cincinnati 33, in Chicago 32, in St. Louis and Pittsburgh 29, in New York 28. Vigorous cities need their nonpublic schools which are one of their most stabilizing influences.

President Nixon has frequently stated that nonpublic schools serve the common good more than just economically, and that a constitutional method of helping such parents must be found. In mandating the School Commission he said: "The nonpublic elementary and secondary schools of the United States have long been an integral part of the nation's educational establishment. . . .The nonpublic schools provide a diversity which our educational system would otherwise lack. They also give a spur of competition to the public schools—through which innovations come, both systems benefit and progress results." In more ways than one, nonpublic schools are a distinct asset to the quality of public schools, an aid to their administrators and teachers, a blessing to their students and parents.

Legislation for tax credits for educational expenses in nonpublic elementary and secondary schools is already a fact in several states and pending in others. On the federal level it is almost a certainty due to its strong support by President Nixon and wide bipartisan backing. While such legislation has already passed its first test in the lower court, the question is: will this proposal pass its constitutional test in the Supreme Court?

Here again, Chief Justice Burger has performed a service for framers of such legislation. In the *Lemon-DiCenso* decisions, he not only mentioned two elements such an Act must avoid (direct funding to the schools, excessive entanglement in its implementation), he also neatly summarized three criteria for constitutionality of such acts:

"Every analysis in this area must begin with consideration of the cumulative criteria developed by the Court over many years. Three such tests may be gleaned from our cases. First, the statute must have a secular purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion, *Board of Education* v. *Allen*, 392 U.S. 236, 243 (1968); finally, the statute must not foster 'an excessive government entanglement with religion.'" Walz.

Supporters of educational tax credit legislation are confident that each criterion is met:

(1) *Secular purpose*. No one seriously questions that nonpublic schools, including church-related ones, have a secular purpose, namely, the education of children in those fundamental skills required of all citizens. In many cases the Supreme Court has recognized that nonpublic schools teach the 3Rs very well. Tax credits will be extended to parents for that purpose.

(2) *Excessive entanglement*. In the implementation of a tax credit statute there is no entanglement of government with religion; there is no funding of school or parents; there is nothing different here than in any tax credit or deduction currently allowed in law.

(3) *Primary effect*. The primary effect of tax credits is to help parents exercise their constitutional right of selecting schools for their children. The statute neither helps nor hurts religion; it is totally indifferent. The parent may send his child to a school operated by atheists, theists or indifferent nonbelievers. Obviously a parent may choose a school with values he cherishes. The state has no right to withhold benefits on the basis of such choice. As the Supreme Court stated in the 1963 *Sherbert* case: "* * * no State may exclude individual Catholics, Lutherans, Mohammedans, Methodists, nonbelievers, Presbyterians, or members of any faith or lack of it, from receiving the benefits of public welfare legislation."

Education is the highest order of public welfare. The removal of bonds of ignorance takes precedence over removal of chains of either economic or political slavery; in fact, it is a precondition if the latter are to be effective.

In the Minnesota decision, Judge J. Jerome Plunkett commented on another aspect which has been overlooked: "The serious constitutional problem would seem to be not whether (the law) advances religion, but whether denial to children of financial assistance for secular education, just because their consciences cause them to go to schools that also teach religion, would unconstitutionally inhibit religion and, therefore, violate the free exercise clause (of the Constitution.)"

Will educational tax credit proposals be held constitutional? President Nixon thinks so; the Presidential Commission on School Finance thinks so; a large number of Congressmen think so; many state legislatures think so; a solid body of constitutional lawyers who have studied recent decisions of the Court think so. Finally, judging from the Supreme Court's own lists of do's and do not's, it appears they will say so.

Mr. CAREY. 136 Members have introduced bills of this kind, Members who cross the whole spectrum of ethnic, religious, and national origin backgrounds. We find bills going back to the one submitted by Mr. Laird, I believe, when he was representing Wisconsin, as well as bills submitted by other Members who are no longer in the Congress. Hence, this notion is by no means new nor is it politically expedient. It is a major question before the Congress. I think these hearings, you will agree, have provided a forum for views such as yours which are very important. I think we all agree that whatever is done here will not be the last word. We do need to labor very, very intensively with great care to make certain anything we try to do would be sound from a public policy and constitutional standpoint. So, your suggestion on the elimination of the tax credit for upper income families and your suggestion that the bill provide clear-cut and explicit safeguards that this money not be used to underwrite religious education, are welcome. I just wish that in the obviously knowledgeable examination you are making of the plight of the public and private schools that you could assist the Congress in some way by finding something that could be done to assist the nonpublic schools in their period of decline.

That is, frankly, what leaves me confused. Your studies conclude that it is inevitable that the nonpublic schools, because of the different cultural patterns of our country, will decline anyway. Why do you find it to be so dangerous to the public school structure that we give some help to the parents whose children are in nonpublic schools so that the schools will maintain a level of quality? Is this not in the interest of making better citizens? If the decline of the nonpublic school is inevitable, as you said, I fail to see why this would be so dangerous to the public school system and our educational democracy. Particularly if we provide limitations so that the credit could not become the primary support level for private education.

Don't you think anything should be done to help those children especially the poor in the inner cities?

Mr. TRACTENBERG. I think it can be done for many of the poor by improving substantially the quality of public education.

Mr. CAREY. What about the schools they are in? Aren't there sections of the country where the only resource for education is a private or nonpublic school? What are you going to do for those children who do not have the option of moving?

Mr. TRACTENBERG. I don't know of any situation where a student can't get to a public school.

Mr. Carey. Maybe by a bus, which may no longer be an option after the vote on the bill on the floor today is concluded.

Mr. Tractenberg. That is a bill in which I also have some interest, too.

Let me say for completeness I think the first amendment of the Constitution was not designed to deal with problems flowing in only one direction. I see the system really as a two-edged sword. I think it is something that certain concerns thoughtful administrators of parochial and private schools, because I think inevitably the more public funds that flow from private and parochial schools, particularly parochial schools, the more the secularization of these schools will be hastened. I know that is a deep concern. I know there are people deeply committed to the religious values that can best be obtained for their children by attendance at public schools. I think the more funds that flow to the public schools along with other factors at increase, such as the great increase in lay teachers at parochial schools——

Mr. Carey. That is why the Court found excessive entanglement would be an even greater danger.

Mr. Tractenberg. Not only to the public schools.

Mr. Carey. To the exercise of religion.

The device most free from entanglement, because there is no relationship between the governmental institution as such and the child, is the tax credit. How can there be any possible impact of the Federal Government, a State government, upon the schools if the only relationship between them is the remission of moneys to the poor person or the provision of a tax credit to the taxpayer? No one argues that there is an impact of the Federal Government upon the political institutions of this country now that we have provided up to $25 as a tax credit or up to $50 as a deduction to support political candidates and political parties.

Mr. Tractenberg. I certainly agree it is a more difficult constitutional question than, for example, direct funding of parochial schools. The issue is not resolved and for some of the reasons I have expressed, I continue to have concerns about tax credits.

Mr. Carey. You have done us a great service in representing your coalition and in indicating the concerns of people in New Jersey have who are working very hard to get better quality education. I do hope that your efforts in New Jersey to obtain better support for all institutions of education in that State will be a success. Thank you very much.

The committee stands adjourned until 10 o'clock in the morning.

(Whereupon, at 3:30 p.m., the committee adjourned, to reconvene at 10 a.m., Friday, August 18, 1972.)

TAX CREDITS FOR NONPUBLIC EDUCATION

FRIDAY, AUGUST 18, 1972

House of Representatives,
Committee on Ways and Means,
Washington, D.C.

The committee met at 10 a.m., pursuant to notice, in the committee room, Longworth House Office Building, Hon. Wilbur D. Mills (chairman of the committee) presiding.

The Chairman. The committee will please be in order.

Our first witness this morning is our colleague from Kansas, the Honorable William R. Roy. We appreciate having you with us this morning, Bill. You are recognized, sir.

STATEMENT OF HON. WILLIAM R. ROY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KANSAS

Dr. Roy. Thank you, Mr. Chairman.

I am very pleased to have the opportunity to testify on H.R. 16257 and a bill which I have cosponsored. I congratulate the committee for holding public hearings on the subject of financing public and nonpublic elementary and secondary education. I would like to make a few comments and then submit a statement for the record, Mr. Chairman.

The Chairman. Without objection, your statement will follow immediately your oral testimony in the record.

Dr. Roy. As the committee is well aware, we face many problems as far as the financing of primary and secondary education. The property tax in the States has become a great burden, and I think all of us or nearly all of us have concluded that it is an inequitable tax. Simultaneously by several recent Federal court decisions have held that the property tax as presently distributed is inequitable and that we should not have poor schools because there is a poor tax base within a given area or good schools solely because there is a high tax base within a given area. Therefore, it is extremely appropriate that the Congress address these problems. It is my personal feeling that it is inevitable that we are going to see greater Federal financing of primary and secondary schools.

I feel that the people of the country have great fear that with this will come a maximum or an undesirable number of Federal controls, and I think we must do everything we can to avoid Federal control of our primary and secondary schools. I think that there are several objects that we should approach, and I think that this legislation does address these goals.

I think we must indeed assure that the schools in the poor areas are of a quality equal to the schools in the rich areas. I think we must provide relief for the presently high inequitable property taxes which we find in most areas of our Nation.

I think we must make it economically feasible or at least possible for parents who, while paying their share for public school support, choose to provide for their children an educational experience diverse from the education provided in public schools.

I think we must make certain that no Federal funds are expended for the support of schools that discriminate against students on the basis of race, color, or creed.

Finally, I think we must make as certain as we can that no Federal mandate either lessens or appears to lessen the privilege and, in my opinion, the duty of each parent to provide for his or her children the best education possible. I think that to deny the maximum educational opportunities for any child or to diminish these opportunities will be counterproductive and will bring about pressures on legislators that will result in enevtually bad legislation.

Now I support all titles of this bill. I do have one great misgiving from something I have heard with regard to title II. It is my understanding that we have had testimony before this committee that any moneys which would be lost in Federal revenues by permitting a tax credit for those who choose a nonpublic education for their children should be deducted from the funds which would otherwise be available to public schools. I feel that this is not only unjustifiable, but I think it will set one portion of our people off against another portion and I think this will be totally counterproductive and diversive.

So I trust that the committee in its wisdom will support public schools fully and will not deduct the tax credit revenue loss from funds for public school education. I feel strongly that the comparability which comes from a private school education, the opportunity for innovations and the other advantages of private schools are so great that indeed it is in our best interest to make it possible for some parents who so choose to take the route of sending their youngsters to nonpublic schools.

I thank you, Mr. Chairman, for the privilege of appearing.

(The statement referred to follows:)

STATEMENT OF HON. WILLIAM R. ROY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KANSAS

The American educational system is one which is looked upon with distinction—it is but a mirror of our population reflecting the diverse, pluralistic society it serves. Both public and non-public schools exist side-by-side, but more importantly, they complement each other in their educational offerings. A unique diversity, characteristic of our democracy, has been maintained through our public-private educational system.

However, in this day and age of soaring costs and spiralling inflation, our educational system is facing an increasingly severe financial crisis. The system under which we have financed our schools in the past is no longer viable, and we must find new ways to finance primary and secondary education.

In the past, the property tax has been the vehicle through which public school financing has been achieved. This tax has become a great burden upon average taxpayers, a situation which the federal courts have recognized. Recent Federal court decisions have held that the property tax, as presently utilized for support of our public schools, is indeed unconstitutional.

Nine out of ten American students are enrolled in public schools. This fact emphasizes the urgency involved in relieving the property tax burden that so many parents face. However, it is important to also remember that included in that statistic is another statistic—that there is one child out of the ten who is *not* attending public school, but rather is attending nonpublic school.

We cannot abandon the children in nonpublic schools, and we cannot allow the "educational economic squeeze" to become a coercive force, depriving parents of their constitutional right of choice. The President's Panel on Non-Public Education has reported that nonpublic school enrollment has been declining at a rate of 6 percent per year.

It is clearly in the national interest to preserve the non-public educational effort. The good of the public school system of America would not be served by the destruction of nonpublic education which today educates so many young Americans. It is in the public interest to act now—to take preventive measures to see to it that our nonpublic schools survive as vital elements in our total educational structure.

The legislation presently under consideration by the Ways and Means Committee addresses itself to the problems we face today in the area of school finance. This legislation seeks to redress the inequitable distribution of resources for elementary and secondary education among the local educational agencies within a State. The tax credit section of this bill offers some degree of relief to parents of children attending nonpublic schools. These provisions will help to alleviate the economic penalty that comes with exercising the parental right to select the nonpublic school option.

I feel very strongly, however, that the monies lost in federal revenue as a result of the tax credit should *not* be deducted from the funds which would otherwise be available to public schools. It is important that we strengthen our *total* educational structure.

In conclusion, let me say that it is imperative that we act in a positive fashion to solve the financial problems facing both public and nonpublic schools. The severity of the financial crisis demands that we act now.

The CHAIRMAN. Thank you, Dr. Roy, for your very fine statement and for appearing before the committee this morning. I know you are very busy.

Let me on behalf of what I know are millions of people thank you for the very fine work you have been doing as a member of the Interstate and Foreign Commerce Committee Subcommittee on Public Health. All of us know of the fine work you are doing in the field and because of your expertise as a physician you are able to make valuable contributions to the work of that committee.

Thank you very much.

Dr. ROY. Thank you, Mr. Chairman.

The CHAIRMAN. We have with us today the Honorable Melvin Price, our colleague from Illinois. If you will identify yourself for the record, we will be glad to recognize you.

STATEMENT OF HON. MELVIN PRICE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. PRICE. Mr. Chairman, the bill before this committee is one of vital interest not only to the parents of the millions of students in private and parochial schools in this country but to all its citizens.

At issue is the fundamental right of parents to choose the kind of education they wish for their children. In the past parents who chose, for religious or other reasons, to have their sons and daughters educated at a nonpublic school could do so by undergoing what was at worst a minor financial sacrifice. However, this is no longer the case. The forces working against these parents are many and varied. Taxes, inflation, and governmental apathy have eroded the financial base of nonpublic schools to the point where large tuition increases seem to be the only solution.

This solution however, is more apparent than real. Most parents of non-public-school children are also faced with rising taxes and living expenses made all the more oppressive by inflation. They are faced with what amounts to a double burden in education since they must support the public schools they do not use as well as the schools they do choose. Increasingly these parents are not able to bear the double burden of increased school tuition and increased school taxes. The result is that many nonpublic schools have closed and many more are faced with closure. Unles relief is granted in some manner nonpublic education will soon be a privilege of the rich.

There should be no question that these nonpublic schools are needed. Over the years they have played a vital role in American education, providing an alternative choice of high-quality education which has strengthened our pluralistic society. Nonpublic schools as an element of American life reflect the diversity of the American people. Different ideas, religions, and traditions have joined under one flag. Nonpublic schools have contributed more than alternate educational opportunities. Being free to create innovative techniques, they have often contributed classroom methods and experience that benefits the public and society as a whole. Their very existence creates a competitive atmosphere that is healthy for education in general.

The principle embodied in H.R. 15005, that of a tax credit, should be familiar to members of this committee since it has been used for purposes other than education for many years. It is also, I believe, a fair and equitable method of approaching the problem and one which avoids the constitutional pitfalls which have prevented other measures from succeeding.

It cannot be too strongly emphasized that this is not special interest legislation. The benefits will be shared by all Americans directly or indirectly, including nonparents and parents of public school children. Educational tax credits will not only not take away funds from public schools they will prevent the crushing increases in school tax burdens which will result from the wholesale transfer of non-public-school children to public schools that is likely to result if help is not given.

In conclusion, Mr. Chairman, I feel that H.R. 15005 deserves enactment because it is a straightforward, constitutional approach that will strengthen both public and private schools.

The CHAIRMAN. Does anyone wish to interrogate Mr. Price? If not, thank you, Mr. Price, for coming to the committee.

We also have with us today the Honorable Leonor K. Sullivan, our colleague from Missouri. We welcome you here, Mrs. Sullivan, and it is good of you to come to us to give us your thinking on this matter. Please identify yourself for the sake of the record and you may proceed as you wish.

STATEMENT OF HON. LEONOR K. SULLIVAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

Mrs. SULLIVAN. Chairman Mills and members of the committee, I appreciate the opportunity to present my views to this committee on legislation now before you to provide either tax deductions or tax credits for parents for some or all of the expenses of educating their children. I strongly support this principle, and have been introducing legislation for many years to carry out this objective.

In the present Congress, my bill is H.R. 1174. It is, I believe, one of the most comprehensive, if not the most comprehensive, of all of the bills before you. I urge the members to consider the approaches this bill takes, and the reasons for those approaches.

As compared to the Burke-Mills bill, H.R. 13495, which has been the main subject of discussion in these hearings, H.R. 1174 differs in these principal respects:

1. The Burke-Mills bill applies only to a portion of certain expenses (tuition) incurred in attendance at a private nonprofit elementary or secondary school. The Sullivan bill applies to all expenses incurred in sending a dependent to any accredited primary, secondary, or higher educational institution.

2. The Burke-Mills bill provides for a tax credit equal to 50 percent of the tuition costs, or $400 a year, whichever is less. The Sullivan bill allows deductions from income for Federal income tax purposes of full tuition, and other fees and charges made by the institution, including books, supplies and equipment, transportation, and in those cases where the student must live away from home, food and lodging as well.

   If the school furnishes lodging and meals, the deductions for these purposes may not exceed the minimum amounts charged. If the institution does not furnish these services but the student is not able to live at home while attending school, then the deduction for food and lodging could not exceed $400 a year.

3. The Burke-Mills bill provides for a reduction in the proposed tax credit of $1 for each $20 by which the taxpayer's adjusted gross income exceeds $25,000. The Sullivan bill permits full deductions for dependents' educational expenses regardless of family income.

I think those are the major differences. Both bills are based on a conviction that parents who incur heavy expenses in sending their children to school which are in addition to the school taxes those parents pay along with all other taxpayers in the community, are entitled to and desperately need recognition in the Federal income tax law of the additional educational burdens they bear.

There is no element in either bill of any special privilege to church-affiliated schools or to those who send their children to such schools. That is because the tax benefits proposed in both the Burke-Mills and the Sullivan bills apply to all those who send their children to any accredited private elementary or secondary institution, and the Sullivan bill applies furthermore to those who incur the expenses of sending dependents to any college or university, public or private. I stress that fact because much of the opposition to this legislation seems to involve arguments based on separation of church and state. Those arguments are not valid in this instance.

TAX CREDITS COMPARED TO DEDUCTIONS FROM INCOME

When I first drafted and introduced legislation some years ago to provide tax relief for educational expenses of dependents, the Committee on Ways and Means as a general policy had been opposed to any and all proposals for tax credits for any purposes. A tax credit of course, is in amount deducted from the actual tax paid. A tax credit of up to $400 would be much more meaningful and helpful to a moderate-income family than a much higher amount allowed as a deduction from income, but a moderate-income family with several children in tuition-charging schools would benefit very greatly whether the tax benefit permitted by law is a credit against tax or a deduction from taxable income. On the other hand, for many families above the moderate-income level, full deduction of dependents' educational expenses from taxable income would mean much more of a real reduction in taxes than the $400 maximum tax credit permitted in the Burke-Mills bill.

I am quite willing to leave the expertise and judgment of this committee the question of whether the educational tax benefits legislation should provide tax credits or deductions from taxable income. As I said, I structured my bill to meet what I have understood the committee's position to be for many years in general opposition to tax credits. The fact that the chairman of this committee and one of its ranking members have joined this year in introducing H.R. 13495 indicates that perhaps the committee is ready to change its traditional views in opposition to tax credits.

NEED FOR RELIEF

In any event, Mr. Chairman, whether the tax relief for educational expenses recommended by this committee comes to the House floor in the form of tax credits or as allowable deductions from taxable income, I will gladly support the committee's decision. I just urge with all of the persuasion I can bring to bear on this issue that the committee move promptly now in the direction of amending the tax laws to aid families in meeting the heavy expenses of providing a good education to their children. Personally, I think we must do more than provide tax assistance in meeting a portion of the tuition costs of elementary and secondary schools. Each year, more and more families are straining their financial resources to educate their children beyond high school. College tuition and living costs have risen alarmingly. Every family with a dependent in college is bearing a tremendously heavy financial burden which the tax laws do not take into consideration. So I urge that, whatever bill the committee approves, the legislation contain benefits reflecting college expenses as well as those incurred in elementary and secondary private education.

If that cannot be accomplished at this time in view of Federal fiscal problems, then, at the very least, we must provide tax relief for parents of children in the private elementary and secondary schools, with the Burke-Mills bill representing, in my opinion, the barest minimum. I support that bill wholeheartedly as far as it goes, but would prefer that it went much farther in covering the full cost of dependent's education, rather than setting a limit of 50 percent of tuition costs up to a maximum credit of $400 per child.

The Burke-Mills bill would become effective for the present calendar year, so I sincerely hope it can be enacted before the end of this session of Congress and thus permit taxpayers to begin claiming their benefits under it when they file their 1972 returns next spring.

The **Chairman**. Are there any questions? If not, thank you very much for appearing before the committee.

Our next witness is Dr. Johnnie R. Clarke.

We are pleased to have you with us this moring, Dr. Clarke. If you will identify yourself for the record by giving us your name, address and capacity in which you appear, we will be glad to recongize you.

STATEMENT OF DR. JOHNNIE R. CLARKE, TAMPA, FLA.

Dr. **Clarke**. Thank you, sir.

My name is Johnnie Ruth Clarke. I live at 3931 38th Way, South Petersburg, Fla. I appear as a parent for five children in parochial schools.

The **Chairman**. You are representing yourself and your children?

Dr. **Clarke**. Yes, sir.

The **Chairman**. Fine. Sit down and we will be glad to recognize you.

Dr. **Clarke**. Mr. Chairman and members of the committee, I come to represent myself, my husband, and my five children. In attempting to carry out our responsibilities as parents, my husband and I have tried to rear our children so that they will be intelligent individuals; so that they will become responsible citizens; and, in trying to do this we have chosen to send them to a school which has a religious setting. We chose a school where emphasis on moral character is very important, because we feel that our children need this type of emphasis in the school setting in order to reinforce that which we are trying to do with them at home.

We feel the pressures on them are great now and we need all the help we possibly can have to rear them as fine children; children that our country can be proud of and we can be proud of.

I am before you today to ask not only for justice, but also for mercy because the problem of keeping our children in school is getting very difficult. The tax burden that we already carry as citizens of our community coupled with the increasing cost of tuition—which by necessity has to increase—is making it very difficult for us to make ends meet and keep our children in the type of school we feel they need to develop in.

So, I come before you this morning to ask you to please consider some type of tax relief for all of the parents of children in schools like the ones my children are in, and who have these schools as important sources for character building. Such schools are important reinforcement factors in trying to help us in our homes to develop our young men and our young women so that they will become capable of making significant contributions as future adults.

Thank you, sir.

The **Chairman**. Thank you. We appreciate very much your very fine statement and for your coming all the way from Florida to deliver it to us.

Dr. **Clarke**. Thank you, sir.

The **Chairman**. I am sure I will mispronounce this name, but our next witness is Mr. Walter J. Schoendorf. I hope my pronunication is close enough for you to recognize the name.

Mr. **Schoendorf**. As a matter of fact, Mr. Mills, that was perfect.

The **Chairman**. Thank you. If you will identify yourself for our record, we will be glad to recognize you.

STATEMENT OF WALTER J. SCHOENDORF, SAN JOSE, CALIF.

Mr. SCHOENDORF. As a matter of fact, Mr. Mills, that was perfect.

The CHAIRMAN. Thank you. If you will identify yourself for our record, we will be glad to recognize you.

Mr. SCHOENDORF. My name is Walter Schoendorf. I live in San Jose, Calif., in the heart of the prune belt in Santa Clara Valley.

I am coming today to represent myself and other parents in our community that face a similar problem. My children were educated in a private school. I no longer will receive any relief because they are now grown up, but I have grandchildren that I hope will have the opportunity my children had to attend a private school.

I am not here to discuss the philosophy of a private school education versus public, the advantages or disadvantages, whether or not we would have an opportunity to choose the school to which we send our children, but really to plead for the opportunity as a typical middle-class taxpayer who doesn't know how to protest, hasn't got time to spend much time out on picket lines since I have to work for a living so that I can pay my taxes, but to plead for some relief from the high costs that I have had in educating my children and really to plead for my children and grandchildren.

My daughter's family income after taxes is less than $5,000 a year. She has one child now attending a private school. The tuition for the school is approximately $180 a year. The cost of maintaining the child in this parish school is $300 a year. In effect, she is obtaining an education for her child through the charity of people who are supporting this private school.

It is a neighborhood school. They do not provide bus service for the youngsters. They don't have hot lunches. It is a brown bag operation. But with all of that and with the sacrifice involved, they are willing to continue because they feel it is so valuable to have an opportunity to send their youngsters to this private school.

Fortunately, this school in the San Jose area also provides educational opportunities for very low-income families. As a matter of fact, of the 250 students attending the school, 130 are children of Mexican-American parentage. Of the 130, 100 youngsters are attending the school without paying tuition whatsoever. Their families are unable to provide any support.

Interestingly enough, these parents are working, but unfortunately their income level is so low that they are unable to pay even the nominal tuition we have of $180 a year. Beyond that, the rising costs we run into in operating our school have increased our deficit position. At one time the $180 tuition covered our costs. Our costs now have risen to $300 a child. At the present rate it seems quite obvious to us that unless we can get some type of relief, this school will close. Perhaps no great loss to all of you gentlemen so far removed from our local problem, but to the parents of these 250 children, it is a great loss. It is a loss of an opportunity to make a choice.

It is the feeling of many of us who are the average, middle-class taxpayer, that we deserve to be heard. We deserve some relief. We would like to be able to pass on the tradition of private education to our grandchildren. Many of us have enjoyed the opportunity of attending a local neighborhood private school. Some of us have been able to send our children.

Like myself, I fear that unless we do receive some relief in some type of tax credit, my grandchildren will not have the same opportunity.

Thank you, gentlemen.

The CHAIRMAN. Mr. Schoendorf, we thank you, sir, for bringing us this very fine testimony all the way from San Jose, Calif.

Mr. SCHOENDORF. Thank you, sir.

The CHAIRMAN. The next witness is Mr. Homer Blair.

We are pleased to have Mr. Blair with us this morning. He has been a long-time friend of my family. He lives in—I thought Joplin, but it is Webb City, Mo.

STATEMENT OF HOMER BLAIR, WEBB CITY, MO.

Mr. BLAIR. My name is Homer Blair, 1601 Broadway, Webb City.

The CHAIRMAN. You are recognized, Mr. Blair. We appreciate having you with us.

Mr. BLAIR. Mr. Chairman and members of this committee, I am here as a parent. I have three children in a southwest Catholic Missouri school system. I have one daughter who will be in college this fall. I am here to testify on her behalf because of the cost of educating these children in the system, in the high school it is $300 per year, in grade school it is $120.

For this additional expense we have sacrificed. My wife and I have cut corners in order to keep them in this school system. It is a good school system. We want to maintain the standards we have. But at the rate of the increased tuition, the additional expenses, and so forth, I don't know how much longer I can afford this.

My children go to this school system because they are just average kids, they are not geniuses by any means. The classes are small, they are compact, the teachers are excellent and my children need all the help they can get. Through these small classes these dedicated teachers—and they have to be dedicated for the amount of money we pay them—give my children the aid and help they need.

Now from the other side of the fence—I site on the finance committee of the school system—it is part of my job to see that the school system stays in existence and that we come up with the money to run it. Our biggest expense is lay teachers; 60 percent of our teachers are lay teachers. In order to have good teachers we have to be competitive salarywise.

So, most of our budget is for lay teachers. I can already see at the end of this year we are going to have a $15,000 to $20,000 deficit which the people of our parishes and local people are going to have to make up. I don't know how much longer they can afford to finance this.

Our expenses, janitorial salaries, and so forth, continue every year to increase. I don't know how much longer we can afford to keep this school system. So any aid we can receive I know that the people of our town and our parishes and our school system would greatly appreciate.

Thank you.

The CHAIRMAN. Thank you, Mr. Blair, for bringing to us your very fine statement.

Our next witnesses are Mr. and Mrs. Coughlin of Topeka, Kans. I know in this instance the wife is to speak first; isn't she?

Mr. COUGHLIN. Right.

The CHAIRMAN. Good.

Mrs. Coughlin, if you will, identify yourself for our record as well as your husband. We will be glad to recognize you.

STATEMENTS OF MR. AND MRS. E. J. PAT COUGHLIN, TOPEKA, KANS.

Mrs. COUGHLIN. He is supposed to speak, too.

The CHAIRMAN. I am sorry. That is not the way it works in our family.

Mr. COUGHLIN. Can you put up with both of us?

The CHAIRMAN. Yes, sir.

Mrs. COUGHLIN. I am Patty Coughlin, 2028 Pembroke, Topeka, Kans., speaking as the mother of eight children, for them and all the other children involved. Thank you for the opportunity to speak before your committee.

Mr. Chairman and members of the committee, I welcome this opportunity to appear before you in connection with a subject which I believe to be very important, aid to nonpublic schools.

As a mother of eight children I am vitally concerned about the educational system in our country today. I feel that it, more than anything else, will determine the kind of world our children will inherit. It is for this reason that parents like us have paid at great sacrifice to add another dimension to education. We feel that public education does not satisfactorily equip our children to contribute to the world they will grow up in.

We appreciate the difficulty of teaching moral values in a classroom where God is not supposed to be mentioned, but at a time when we desperately need to explore our responsibility to our fellow man in every way possible, we feel that a very vital part of the educational process is missing in the public school system. We feel it is a parent's right to choose this type of education for his child without being penalized.

Public school education is one of our biggest enterprises involving billions of dollars each year. I feel the public school system would be more apt to improve if it were more in competition with a growing nonpublic system. A monopoly of the entire educational system would only promote stagnation.

I feel that there are some needs that can unquestionably be better satisfied through a nonpublic school because of its flexibility and freedom to use innovative methods, methods which are more suited to the needs of a particular community than the standardized rigidity of the public system.

Through my volunteer work at home I have clearly learned that whereas the average middle-income and affluent family is satisfied with what the public school offers their child, the lower income and poor families feel that the same school in no way meets their needs. I know many teachers who agree.

A group of us in Topeka with children in parochial schools have tried for several years to encourage the public school administration to become more responsive to the needs of the low-income and minority students. We have volunteers who tutor children and provide transportation for field trips. We have emergency funds to buy things that the children need such as clothing, football shoes, material for home economic classes, medicine, and food, and in some cases we pay rent and utilities in a crisis situation.

Through these efforts we realize what an impossible task the public system has in meeting the educational needs of the underprivileged. I feel our country should go even further by allowing grants to low-income families for nonpublic education, thus encouraging the formation of nonpublic schools in areas where the public schools have by their own admission failed completely.

According to the President's Panel on Nonpublic Education, the inner-city Chicago Catholic school pupils' achievement was equal or superior to that of comparable public school pupils, but at 59.8 percent of the cost of educating a child in the public school. Think of what might have been done if those same schools had had all the resources they needed to do the job.

I do not want financial relief for the parents of nonpublic schoolchildren at the expense of public school parents. Their schools are in deep financial trouble as it is, and it would serve no worthwhile purpose to put both groups in competition with each other for the tax dollar.

Hopefully, we have come a long way from the days of the KKK and the horrible suspicions of one another that were bred and nurtured by ignorance on both sides. It is time to admit that nonpublic schools have, through the use of volunteers and innovation with no frills of any kind and for the least possible money, turned out loyal American citizens whose education instills in them a respect for our law. Their education has made them valuable contributors to this country we love.

We need some form of relief to keep these schools open, but even more importantly the entire educational system of our country desperately needs the balance and alternatives nonpublic schools offer. Thank you.

The CHAIRMAN. Mr. Coughlin, do you want to add to the statement?

Mr. COUGHLIN. I have a prepared statement I will read unless you prefer I didn't. I will leave it up to you.

The CHAIRMAN. Either way you want to do it.

Mr. COUGHLIN. I will read the statement if you don't mind.

The CHAIRMAN. All right.

Mr. COUGHLIN. Mr. Chairman and members of the committee, it is a pleasure to be here this morning to discuss with you the financing of public and nonpublic elementary and secondary education.

Mr. Chairman, it is my opinion that there is no more important undertaking within our country than the education of our children. It is precisely because of this that our legislators and courts should exercise the utmost caution when making decisions that will affect this process.

They must ask themselves, "What decision is going to promote the best overall education for the children of our Nation?" This may seem to oversimplify the problem at hand, but, in my opinion, one cannot effectively deal with the overall problem without first answering this question. Millions of parents in our country have been faced with such a decision during this century: whether or not it was worth while to pay double their share of this Nation's education bill in order to provide an educational choice for their children, to provide what they thought was an opportunity for an education that dealt with their children in a more complete way, in what they thought was a better climate for the development of people who could better serve our country and the world.

These parents have always realized nonpublic education was not for every child. As one of their Representatives, I ask you to realize that public education is also not for every child. In my opinion, it matters little that some can demonstrate that nonpublic education has not accomplished all that it proposed to do. I have many friends in Kansas with children in public schools that shout the disappointments of public education. The important point is that both public and nonpublic schools are needed—one benefits from the other. If both do not improve, both will suffer.

It is a fact that millions of parents have spent billions of dollars to develop and maintain a nonpublic school system, while at the same time they were forced to support another system of education which they choose not to use. This alone should be the greatest testimony to the value of and need for continuance of the nonpublic educational system. You are considering this legislation because the very existence of the nonpublic school is dangerously threatened.

Nonpublic schools in small towns throughout the Midwest have been forced to close at an alarming rate. They feel the cost pressure earliest and strongest since their support base is smaller.

The public school system in the Midwest seems to do fine when it provides for the average or the above average child, but it seems to be unable to cope with its responsibility to those who do not fit into this mold. The nonpublic system, not bound by a rigid structure, is freer to adapt itself to the environment and needs of the individual child. The nonpublic school system has demonstrated its ability to provide these broader educational opportunities at a lower cost per pupil than the public system has.

There are many instances where parents realize their child would be much better off in a nonpublic school, but the additional cost is prohibitive. Despite this barrier, I know many in Topeka who pay the price of nonpublic education, even though it strains their budget beyond its limit. They would rather do this than bargain away a chance for the better development of their children.

I cannot see how our Government can justify a refusal to give such parents a choice. It is a fact that with education costs what they are today, parents no longer have this choice, that is, if they must fully support two systems without some assistance. Since our Constitution gives parents the right of choice between the two systems, it is implicit in that right that the Government should not make the choice impossible. This is exactly what happens when parents who choose nonpublic schools are forced to support the public system of education without any type of relief, in the face of costs rising in both systems beyond bearable limits.

I feel that our public system has an almost impossible task to perform when we realize the diverse environmental backgrounds it must serve. Instead of allowing our alternate, predominantly church-related system to go down the drain, we should be looking for new, additional educational systems with which the demands of all our children can be met.

I am wholeheartedly against draining resources from our present public school system to prop up our nonpublic system, or any other educational concept. The record in educating our children has illustrated such weaknesses that we can ill afford to resort to experiments in economy.

This Nation in 25 to 50 years will be what today's children make of it. We cannot fight inflation with their destinies. Thank you.

The CHAIRMAN. Thank you both, Mr. and Mrs. Coughlin, for your very fine statements. We had understood that your Congressman, Congressman Roy, had intended to introduce you, but we apparently moved too fast for him to get back in the room.

Dr. ROY. If I may say one word——

The CHAIRMAN. We will be glad to have you do so.

Dr. ROY. As you, Mr. Chairman and members, must realize, we are very proud of the Coughlins in our city. We have many fine people in the second district of Kansas. They are the finest. As I believe you have learned, they have eight children who have either attended nonpublic schools or are presently attending nonpublic schools.

In addition, they have done a great deal of community work. Patty recently received a very significant award in our community for her work with the poor. So I think that the message they bring to us this morning is one to which we might well pay great attention. Thank you, Mr. Chairman.

The CHAIRMAN. I agree with you, it was a very fine statement. Thank you, sir.

Mrs. Fahey, we understand your Congressman wants to be here to present you. Do you mind waiting for him to arrive?

Mrs. FAHEY. No, Mr. Chairman.

The CHAIRMAN. The next witness is Mr. Patrick J. Kennedy, San Antonio, Tex.

STATEMENT OF PATRICK J. KENNEDY, SAN ANTONIO, TEX.

Mr. KENNEDY. That is correct. I am here representing myself and speaking as an individual and for my family.

The CHAIRMAN. You are recognized, sir. We appreciate having you with us. You may have a seat if you desire.

Mr. KENNEDY. I appreciate greatly the opportunity to appear before this committee in favor of a tex credit bill for parents with children in nonpublic schools. In approaching this question, I would like to comment, sir, that I do not come with a prepared statement. I would hope that it will be permissible to proceed with an oral statement.

The CHAIRMAN. You are so permitted.

Mr. KENNEDY. Though I would like if I might to reserve the right, if it would be appropriate, to file a written statement at a future time.

The CHAIRMAN. Without objection, you have that permission.

Mr. KENNEDY. I feel that with respect to all witnesses to appear before a committee, it perhaps would be helpful to have some insight into the attitude of the witness, so first I would like to express myself that I approach this question with deep sincerity and conviction, but certainly with no hostility toward the public school system.

I would presume to reflect the position that I think is shared by many, many citizens of Texas. I know that to be a fact. I would urge that this bill or legislation of this nature be passed by reason of public interest and public necessity. I think that is a distinction that ought to be made. I do not think that I could come before this committee and urge that this bill be passed unless I believed and thought that it could be established that it was in the public interest.

I would urge that it be considered to be in the public interest for several reasons, one of which is I think it has been established that as parents we have an obligation to educate our children. I think a distinction ought to be made, and I feel that the citizens of Texas are strongly aware of this, that the Government should not preempt that obligation.

We feel that if it is our obligation, then we have the right to make the choice of the character of that education provided we meet certain standards of education. This would go without saying. But we feel this right has been too long limited.

We feel that the right is put to us in these terms: You may put your children in the school of your choice provided that it is a Government school. If you do not put the children in a school selected and sponsored by the Government, then you will be penalized; certain benefits will be withdrawn from you.

So I approach this matter with a sense of frustration as I know that countless Texans do also, because we feel that we see that the private school system has made great contributions to this country. This could go without contest. Fifteen years after the fall of the Alamo, four brothers in France came to Texas and established the first boy's school. They were preceded, they found, by an order of nuns that had come shortly before.

So the private school in Texas goes way back, and great contributions to the State were made. Yet we feel frustrated because we see the private school system falling into bad times.

I would give you the following statistics and information. We have approximately 11 million people in Texas; approximately 2 million are Catholic. There are 11 dioceses, 332 primary and secondary schools, with a total enrollment of approximately 200,000.

In the San Antonio area with which I am familiar, we have a total population of 1,250,000 with 533,000 Catholics, 32 counties, 77 elementary and secondary schools. The total enrollment is 22,600, 10,722 being Mexican Americans.

I would urge you to realize that 15 years ago, 50 percent of the school-age children in the diocese of San Antonio were in private schools. Today it has fallen to 20 percent, indicating, I assure you, that there are large numbers of parents who would like to make the choice, but they cannot do so because they cannot meet the rising costs.

There is another reason why I would urge this to be in the public interest. I think the record would show that private schools do a good job. They do a good job in terms of economy of need. It is my understanding that the national average for the education of children today stands at $839 per year. In Texas, it is about $646 per year. In my area, in San Antonio, in the nonpublic schools, we are doing the job at a cost of about $440 per year.

I urge you gentlemen to realize that we are saving the taxpayers money when we do this. I would urge you also to consider the principle that was recognized in the 1966 U.S. Chamber of Commerce

Task Force report that competition in education is good, not in terms of any real opposition, but in trying to do a better job, the principle that there is always someone who can do a better job, the economy of need.

I have eight children. I received the news from my wife who registered them all just last week—it is more interesting to me when I put the figure to it—for the five children who are in elementary, the total tuition bill will be $1,862 for the year 1972; if I add just books and fees, another $300. So I am looking at $2,100 for the year for the five in elementary school.

I have two in high school with a total tuition of $660 for the two of them combined, with books and fees at another $150. So I am really looking at an absolute cash outlay for seven of the children, because the eighth is in college, of $3,000 this year. It would occur to me that if contributions can be made to charitable institutions and be found deductible, if citizens can be raised to be educated properly to do a good job for this country, that it would not be too much to ask our Government to give some recognition to make it possible that we can let the private school system continue and do its job in the future as it has in the past. Thank you, Mr. Chairman.

The CHAIRMAN. I also congratulate you, Mr. Kennedy, on your very fine statement. It has been very helpful to us.

Mr. KENNEDY. Thank you, sir.

The CHAIRMAN. We understood your Congressman was here earlier, but had to leave.

Mr. KENNEDY. That is correct. Thank you, sir.

The CHAIRMAN. Mrs. Fahey, do you want to go ahead? Your Congressman has evidently been delayed. I understood he was on his way here, but he has had time to arrive. I do not want to delay you any further.

We appreciate having you with us, Mrs. Fahey. If you will identify yourself, we will be glad to recognize you.

STATEMENT OF MRS. RICHARD FAHEY, PITTSBURGH, PA.

Mrs. FAHEY. I am Mrs. Richard P. Fahey of 103 Hoodridge Drive, Pittsburgh, Pa. I am speaking for myself and my husband, our own six children, and the over 80,000 children in the diocesan schools of Pittsburgh, Pa.

The CHAIRMAN. You are recognized, Mrs. Fahey.

Mrs. FAHEY. Mr. Chairman and members of the committee, all of our children have attended Catholic schools from first grade. During the school year which just closed (1971–72), my five sons were in school—one in the eighth grade, two in high school, and two in college—each paying tuition imposing a considerable hardship on us.

My husband and I decided long ago on a Catholic education for our children for many reasons. First of all, we were sure that their education in the secular subjects would be exceptionally good. The Catholic schools in our area have a reputation for good education in the secular subjects. They also have an excellent reputation for experimentation and progressiveness.

When our only daughter, who 2 years ago graduated from Duquesne University, was in elementary school, the Catholic schools in Pittsburgh had already introduced individualized instruction, the great books programs, and various enrichment programs for both elementary and secondary students.

May I note parenthetically that our Catholic school system has an extensive and outstanding program also for the slow learner, the retarded (from birth to adulthood), a school for those with speech and auditory handicaps, and a secondary school for young women with emotional problems. It also has a diagnostic clinic which evaluates youngsters having difficulties adjusting to the classroom. All of our school programs are open to any child in the community, regardless of race, color, or creed.

I must confess that as parents, my husband and I studied the secular aspect of our children's education with great care for we live in an area where the public schools are excellent, and like all parents, we wanted the best for our children. I think I can speak to this point with some authority since due to my interest, concern, and involvement as a parent, I was appointed to the diocesan school board 7 years ago and have served as its chairman for the past 2 years.

The secular component of my children's education is very important to me. But so is the religious component. What I want for my children is not only an education which prepares them for their secular life, but one that deals with their religious life as well. As a parent, I think the school should complement what is taking place in my home, especially in the area of values, and help my children mature spiritually as well as intellectually and socially. I want my children to learn those religious truths, values, and ideals that have played such an important part in their youth and adult life. This is what I want for them, and I want it in a school setting because I believe it will help them learn these truths more readily. It will help them to see the relationship between the secular and the sacred. This is a decision which my husband and I made in good conscience.

I am fully aware that other parents have studied the matter with equal seriousness and arrived at a different decision. This is their right. In fact, this freedom of choice in education is one of the wonderful things about our Nation. It recognizes that there is room and even a need in education for a plurality of educational approaches and opportunities. This makes sense to me.

If pluralism is as important as everyone says it is, then plurality in education must be preserved. Furthermore, I like the fact that our Government backs up the principle that parents have the right to make the decision about the education of their children. This makes sense to me, too. And I am happy to know that this is a "right" and not just a privilege. Our Government has had a lot to say about "rights" and it seems very clear to me that it means what it says. Although the wheels of government sometimes grind slowly, it seems perfectly clear to me that in my country a "right" is something very sacred and that my Government will protect rights at any cost.

But having said this, I must confess a certain deep concern about the survival of this basic right to choose the kind of education I want for my children. As the chairman of the Pittsburgh Diocesan School Board, I speak for the parents of some 80,000 to 90,000 children who are caught up in the spiraling costs of education and the constantly increasing tuitions because we choose a nonpublic school. We simply cannot continue to exercise this right in face of the staggering economic pressures confronting us. We need help, and I am here to ask you to find some way to help those parents who have chosen to educate their children in a nonpublic school. This right is so very important to us and, we believe, to our Nation. It must be preserved.

We believe that a tax credit program provides a reasonable answer to our request, and we ask that you do everything possible to see that such a program is implemented.

I am grateful to you, Mr. Chairman, and to the committee for the opportunity of making this presentation in my own name and in behalf of the parents of over 80,000 children in the Catholic schools of the Diocese of Pittsburgh. I am confident that you will consider our problem carefully and respond to our need and plea.

Thank you.

The Chairman. Mrs. Fahey, we thank you very much for bringing your very fine statement to us. Are there any questions?

Mr. Byrnes. Mr. Chairman?

The Chairman. Mr. Byrnes.

Mr. Byrnes. I appreciate very much your statement, Mrs. Fahey. As a member of the diocesan school board in the Pittsburgh area, maybe you can give us a little information on costs that you have as a school system on a per-child basis and on your general tuitions as well.

Mrs. Fahey. Actually the different areas of the diocese have different costs per student.

Mr. Byrnes. Does it vary widely?

Mr. Fahey. Yes, it really does, depending on a lay teacher-religious ratio. If there is a large number of religious teachers in a certain school system, then of course their per-pupil cost is lower.

Mr. Byres. That is changing now. You can't depend quite as much on having a supply of teaching nuns.

Mrs. Fahey. No. In the main we are getting to the place where there are half and half and in mnay instances more lay teachers than religious. Our tuition is in general about $75 to $100 in the elementary school and $350 to $500 in the diocesan high schools.

Now there are private girl academies where the tuition might be higher than that.

Mr. Byrnes. Do you have some idea of the range of cost per pupil?

Mrs. Fahey. It would be between $250 and $350 per student, the cost per student in the elementary school.

Now, in the high schools, the costs range from probably $350 to $650, again depending on the number of students in the school, and depending on the ratio of lay and religious teachers in the school.

Mr. Byrnes. Thank you very much.

The Chairman. Are there any further questions? [No response.]

Again, Mrs. Fahey, we thank you so much for bringing us your very fine testimony.

Mrs. Fahey. Thank you, Mr. Chairman.

The Chairman. The next witness is Mr. Virgil A. Lange.

Mr. Lange, we are pleased to have you with us today. If you will identify yourself for our record, we will be glad to recognize you, sir.

STATEMENT OF VIRGIL A. LANGE, FORDYCE, NEBR.

Mr. LANGE. Mr. Chairman and honorable members of the House Ways and Means Committee, my name is Virgil A. Lange. I have been a rural mail carrier in Fordyce, Nebr., for the past 20 years.

I am grateful for the opportunity to appear in favor of H.R. 16141 and the other proposals designed to offer tax relief for parents who have chosen to have their children educated in nonprofit, nonpublic schools.

Our family made the choice to send our children to an independent school for a variety of reasons, one so that our children could be better educated in the Christian principles on which these United States were founded, and thereby become better citizens of this Nation.

This fall we will have two of our children in college, one senior, one junior, and one freshman in Cedar Catholic High School, one in the sixth grade, and one in the second grade at West Catholic Elementary School. For our three secondary school students alone, the tuition will be $540. Textbook and transportation fees will raise this to well over $700.

Obviously, we would be very pleased if a tax credit bill were passed this year, as would many others in our community and the rest of Nebraska.

In Nebraska, about one-seventh of the elementary and secondary school students attend nonpublic schools, which benefits the taxpayers in our State to the tune of approximately $30 million annually.

In my own school district in Hartington, Nebr., the contribution of the nonpublic schools is obvious. Nine years ago, when the decision was made to enlarge the Catholic high school, a fund drive was conducted, and support was volunteered throughout the community from both public and nonpublic school supporters.

Several years later, when it became apparent that the nonpublic school children were being excluded from certain Federal programs, the public school district in Hartington initiated a lawsuit to insure the participation of eligible nonpublic school children. Both the lower court and the State supreme court ruled in our favor and a final determination by the U.S. Supreme Court is expected shortly.

A last example that the educational leadership of our community strongly favors the preservation of both public and nonpublic systems of education was the joint effort of both the Hartington Public Schools and the nonpublic school leadership to pass a bond issue earlier this year for a new public school building.

I read in yesterday's Washington Post that opposition was raised on the premise that if the nonpublic schools closed, the public schools could absorb their pupils. I can assure you if the nonpublic schools in our area are closed, the impact would be substantial.

A conservative estimate is that the school levy would be raised from the present levy of about 43 mills to approximately 80 mills, and such a move would certainly impair the quality of our children's education.

Our parents want the opportunity to choose, and have demonstrated their desire often and openly. On their behalf, I strongly support the approach of H.R. 16141, which would help both systems. The financial problems which this bill attempts to alleviate are not unique to either system, and I congratulate the sponsors for their recognition of the need to keep both systems viable.

Concern has been expressed by some of our people that those who choose to send their children to a nonpublic school, but do not earn enough money to be liable for income tax, would be excluded from the benefits of the tax credit bills. This is tragic, since they are the ones most in need, and I hope that this committee will recognize the problem and correct it.

In summary, I would like to restate the urgent need for the passage of a bill embodying the concepts of the proposals under consideration, which would provide meaningful tax relief to those who, like myself, are in the lower and middle income brackets and who have chosen to educate their children in qualified nonpublic, nonprofit schools.

If there are any questions, I will be happy to answer them.

The CHAIRMAN. We thank you, sir, for your very fine statement.

Are there any questions?

We thank you again.

Mr. LANGE. I thank you.

The CHAIRMAN. Mr. Bruce McGrath.

We are pleased to have you with us, Mr. McGrath. If you will identify yourself for our record, we will be glad to recognize you, sir.

STATEMENT OF BRUCE McGRATH, MARION, IOWA

Mr. MCGRATH. Mr. Chairman and members of the committee, my name is Bruce McGrath. I am from Marion, Iowa. I wish to be recognized on this issue.

The CHAIRMAN. You are recognized, Mr. McGrath.

Mr. MCGRATH. Thank you.

I am the father of seven children, five of whom are of school age and attend a private Catholic school in Marion, Iowa. I am also the vice president of the Archdiocese of Dubuque Board of Education.

Now the Dubuque School System is in Northeast Iowa. It encompasses 30 counties; our enrollment presently is 28,500 students.

I come before you to ask for immediate enactment of tax credit legislation for a number of reasons. As a parent, parishioner, and board of education member, I have seen a growing crisis in the operation of the nonpublic school system in our diocese, as well as in our State. Spiraling costs that we are all familiar with in both the public and private schools have put a double burden on myself and other people like us who choose to have our children in private schools.

We have tried a number of things to get around these costs. We closed schools, curtailed operations, and have gone into many types of economy measures, such as shared time and released time, to keep our schools open.

Along with that, great sacrifices have been made on the part of our people in our congregations to support our programs, because this is done primarily through tuition and voluntary contributions.

The problem is basically that with all of these measures we can't keep up with it. As an example, the parish I am from has 350 children in our eighth-grade elementary school. We also sent 68 children to a central high school. The cost to our parish this coming year to maintain this school commitment will involve somewhere around

$175,000. This will be, as I say, volunteer contributions on the part of our congregation and tuition.

At this point, to give you another picture of what this means, our parish is very representative of a number of parishes in our diocese schools. We have just plain run out of money. Now, I don't say that as a plea for mercy, but simply as a fact. We have used the assets of our parish, we have done the necessary things to try to economize in our programs, and our parish is essentially unable to continue our commitment.

This has two effects. The initial one is that it has raised my cost, the cost to myself and other parishioners, terrifically to support the program.

The second thing is that it is starting to cause a confidence crisis among our people. They have seen the measures we have taken. They know the extent to which we have put ourselves out to keep our schools open. Even with those things, they can see us running out of time.

So, the problem comes that people, when they want to put their children in the first grade, they say, "The school may not be here when they get to the sixth grade," so they decide not to send their children.

In the State of Iowa alone, it has meant that 30,000 nonpublic school students have gone into the public schools since 1965. I am sure this is one of the main reasons for it.

This is a great loss for me, personally, because as a parent, in reflecting the views I know of the poeple who are supporting the schools, I feel it is very essential that I have the right to have my children raised in a school that reflects my attitudes on the moral and spiritual values and how they intertwine with those things you pick up in school.

I feel it is essential that these things be given to the students, my children, the other students in our schools, so that they learn them as part of their total development and not as something that they get for an hour on Sunday or that they get as part of an ethics course.

I feel that it is so important that I am willing to make the commitment to support this, and many, many people are, as well.

Along with that, we do offer a fine school system. I do not want what I say about the economic plight of our school to indicate that the quality has been compromised. The diocese schools I am involved with are fine schools, they are recognized nationally as being a fine school system.

A good example of that is the fact that we have been affiliated with now for almost a year the Charles F. Kettering Institute in establishing IGE schools and we are the only system in the State that has this.

So I ask your help, not to pay for our schools, that is not the point—we have made the commitment to support them and we will continue to do so—all we are looking for is enough tax relief so that we can continue to operate the schools on our voluntary contributions, so that I can continue to have my free choice to send my children to a school that I feel represents the philosophies and the attitudes that are such a big part of my life.

Of course, there is the final factor, and that is the cost to the State if our schools were to close. It is critical in some areas, such as the

Dubuque County schools. This is a large school area where there are primarily Catholic people. If all those schools were to close, it would be a disaster for the taxpayers of that area.

The problem, of course, then boils down that if we do not have this type of support, and I must make the point that we need it urgently, we will have to reduce our schools down to a size where the only schools that will stay open will be the ones in the very wealthy areas where the people can afford to support them on voluntary contributions alone.

This runs contradictory to all the things we try to do in our schools because we want to offer quality education in areas where they cannot afford to pay tuition, where they cannot afford to pay for the schools. This is the reason some type of legislation is necessary.

Thank you for your attention.

The CHAIRMAN. Mr. McGrath, we thank you for a very fine statement. We appreciate your coming from Marion, Iowa, to deliver it to us.

Are there any questions?

Mr. BYRNES. Mr. Chairman.

The CHAIRMAN. Mr. Byrnes.

Mr. BYRNES. Mr. McGrath, maybe you can answer the same question I asked another witness, since you are on the school board. You are vice president of the diocesan board?

Mr. MCGRATH. That is right.

Mr. BYRNES. What do you find is the basic cost in your system per child?

Mr. MCGRATH. As the other person mentioned, it does vary depending on the ratio of religious that are contributing services. For instance, in the Cedar Rapids metropolitan school area, it is around $360 to $400 per student in the elementary school. It will run anywhere from $600 to $700 in the high school. These are representative of our whole system.

Mr. BYRNES. Does that include the cost of your capital equipment, or is that just the cash outlay each year?

Mr. MCGRATH. The figures I have there I do not believe include the capitalization cost. Where I got those figures was out of the budget of the schools for the Cedar Rapids metropolitan area, and these are the operating costs. It does not include capital.

Mr. BYRNES. What is the range of your tuitions?

Mr. MCGRATH. The tuition currently at Regis School is $288. It is typical of the high schools in our State.

Many of the grade schools do not have tuition. They are supported by voluntary contributions alone. I would say that is more the case than not. We do that for a reason——

Mr. BYRNES. Do you have any idea in your high school system what percentage are not able to pay the full $288 tuition per child?

Mr. MCGRATH. It is difficult to say. Let me give an example. In our parish for years we had paid one-half the tuition for the students that we sent to Regis out of the voluntary contributions. We have had to reduce that in the last couple years.

Mr. BYRNES. The parish pays half of the tuition for students who go from that parish to the diocesan high school?

Mr. McGrath. For all of them. Then there are some—now, this is a typical figure—68 students, 11 of them I know are not paying anything. They cannot afford to.

Mr. Byrnes. The other half?

Mr. McGrath. The other half, this is right.

Mr. Byrnes. Your parish is also assessed, I assume, a diocesan allocation of the cost that is not covered by tuition. Is that correct?

Mr. McGrath. That is right.

Mr. Byrnes. That is the way it works.

Mr. McGrath. That is right. The schools centrally support the program in the central high school. So each one has an assessment.

Mr. Byrnes. Somebody makes an allocation of a charge for parish A, parish B, parish C?

Mr. McGrath. That is correct. In fact, it is an agreement among the parishes. They sit down and look at the budget they have. Based on a number of factors, they arrive at a percentage, number of students, debts, a number of other factors.

Mr. Byrnes. Thank you very much.

Mr. Conable. Mr. Chairman?

The Chairman. Mr. Conable.

Mr. Conable. Do you have any idea of what the cost per pupil is in the public schools in Iowa?

Mr. McGrath. The data that I have were, as of 1970, $813 per student. I am certain it is higher than that now.

Mr. Conable. Can you tell me to what degree does the Iowa Public School Board, or whatever it happens to be, have any control over your curriculum?

Mr. McGrath. Only through the State requirements, in other words, the minimum standard requirements they have.

Mr. Conable. They do not impose any curriculum standard of any sort on you?

Mr. McGrath. Oh, yes. Of course, they have the normal curriculum standards, the number of hours of each subject that are to be taught, the teachers have to be certified by the State, and all of our teachers are certified.

Mr. Conable. Including the contributed services?

Mr. McGrath. Yes. Every one of our teachers are certified. We have to meet all their requirements.

Mr. Conable. There is a fairly high degree of control by the State over private schools.

Mr. McGrath. Over all schools, that is right. As I say, in terms of teacher qualifications, they do certify them. In terms of class hou the number of hours we have for each particular subject, they have. To the best of my knowledge, they don't have any control over the content.

Mr. Conable. Is there control also over building standrads?

Mr. McGrath. Yes; they inspect our schools, surely. State fire inspection. We are subject to the same codes as any other business would be in the areas that we are in

Mr. Conable. I find quite a difference in different States. Of course, we are anxious not to have any public program we get into with respect to private schools, whether it is tax credit or institutional grants or whatever it is, impose on private institutions what is simply another public school system.

The whole purpose of private schools is to permit people some choice. Apparently there already is a fairly high degree of control over educational standards. What, then, is the great difference between the private and the public schools in Iowa? It would be the additional religious instruction; would it, generally?

Mr. McGRATH. I think it is more than that. The attitude and philosophy that we ingrain in our entire program is something that is difficult, in fact not appropriate, to put in a public school program.

We have, certainly, a certain number of hours of religious education, but I believe it is a great deal more than that. It also involves the philosophy of the administration of your school. It involves the philosophy that we feel you must put moral and spiritual values in the whole program so that will become part and parcel of history, economics that we teach, because it is part of our value system.

Of course, we feel this is very necessary, that you can't take this out of our school and still have a total program. You take something out of the program when you are no longer able to recognize the spiritual values and such as part of our value system.

Mr. CONABLE. There is probably a wide range of contributed services, depending on the locality and availability of religious instructors?

Mr. McGRATH. Right. Our ratio is about the same as has been spoken of before, 1-to-1 or 2-to-1. It varies from school to school. These religious instructors are not only involved in the school program but beyond that as well.

Mr. CONABLE. Thank you.

The CHAIRMAN. Are there any further questions?

Mr. DUNCAN. Mr. McGrath, are you familiar with, or do you have, strictly private schools outside of sectarian schools?

Mr. McGRATH. Do we have any just private schools outside of the ones that are affiliated with religion?

Mr. DUNCAN. Yes, sir.

Mr. McGRATH. Do you consider a Montesorri school a private school of some kind? We have those.

Mr. DUNCAN. Do you know what the tuition cost is in that school?

Mr. McGRATH. No, I am afraid I don't.

Mr. DUNCAN. You are not familiar with the cost of tuition?

Mr. McGRATH. No.

Mr. DUNCAN. Thank you.

Mr. CAREY. Mr. Chairman?

The CHAIRMAN. Mr. Carey.

Mr. CAREY. I would just add a brief word of commendation to Mr. McGrath concerning your selection of your Representative in Congress. I have the great honor and pleasure of occupying the suite in the Cannon Building which faces that of Congressman John Culver. I want you to know on a serious note he has been most helpful to me. We have been discussing the plight of the schools and parents as you have described it today.

I want to state very forcefully that Mr. Culver is a highly respected Member and one whose knowledge of legislation is most helpful to many of us. On this particular matter he has given me the same information you have expressed today as to the difficulty faced by parents like yourself. I hope that in continued counsel with him we can do something to help.

I have just one question. Time and again there have been inquiries as to why costs are lower per pupil in the nonpublic schools than they are in the public schools in the same area.

One of these factors, in my experience, has been almost universally due to the fact that the nonpublic schools have larger class sizes than the public schools. Would this be true in your case?

Mr. McGRATH. No, that is not true in our school. Most of our school class sizes are——

Mr. CAREY. What are the pupil/teacher ratios?

Mr. McGRATH. Twenty-four to one. Some are as low as twenty to one.

We have had that problem in the past, but unfortunately, one of the things that did happen was that with the cost going up, a lot of people did leave our schools.

Mr. CAREY. It is interesting to note the fact that usually in a large metropolitan area school system, such as New York, the class size in the nonpublic schools is larger. In your case it is 24. In the public schools, the ideal figure they strive for is 20 or less.

In fact, in the inner city schools, where the problem of education of the disadvantaged child is more acute, the schools have been striving for a ratio of 1-to-15 or 1-to-12.

Over 7 years ago a study on the relationship of class size to quality education indicated that in the hands of an experienced teacher class size was not a key factor in the quality of instruction. Naturally, when it got up to 60 or 70 or 100, such a conclusion would not be valid.

In the area grouping we are discussing, it was demonstrated across the board that the experienced teacher factor was more relevant to quality education than the size of the class he or she instructed. Naturally, it is ideal to have one-to-one instruction if possible.

This is interesting, because we have found a greater span of tenure in nonpublic schools than in public schools. One reason is that the religious person usually gives a lifetime commitment to the school. This commitment adds to the experience factor.

What about the lay teachers? Are they making careers of teaching in nonpublic schools? Or is it an emergency situation where you have to hire teachers on a short-term basis because you do not have the clerical teachers to carry on the subject matter of instruction?

Mr. McGRATH. No. I think again I am saying this as a fact in our school system teachers are attracted to the atmosphere they find in our school. They like the commitment that is made on the part of the administration and the religion in the school.

Consequently, we do not pay the same scale as they would receive in the public schools. We do get good teachers. In our own school we have a number of teachers who have been there for many, many years because they like the atmosphere. In fact, I have had teachers comment to me the big difference is not just the teachers, it is the relationship of the teachers and the students; the whole atmosphere was different.

Mr. CAREY. You were about to give an answer to a question addressed by Mr. Byrnes. You began to say something about why you don't charge tuition in the elementary school. I was interested in hearing that.

Mr. McGRATH. We have tried to stay away from it in some of our schools because we do not in that way force a poorer family to come around and say, "I can't afford the tuition; will you carry me for nothing?"

Mr. CAREY. That is the point I want to explore.

Is the declared policy of your board to attract low-income children and children of other races and creeds to your schools where you can afford to educate them?

Mr. McGRATH. Yes. We have largely a white population in our part of the State. There is not a high Negro, Mexican, or Spanish population. In Waterloo, where we do, we have tried to keep, and as a policy have lived with the fact that we want to keep, our innercity schools open, that we want to keep it open through voluntary contributions at no cost to those people who can't afford to go.

We have done that even to the point of grants for high school students who can't afford tuition. As I mentioned, in our parish the parish had paid half of the tuition to get them into the school.

Mr. CAREY. This point has not been raised, to my recollection, in the hearings. It may be too technical or legal in character to address to you as a question, but I want to raise it and get your reaction as well as the reaction of other members of the committee, and eventually other witnesses.

Much has been said about the right of the parent to exercise his options in selecting alternative forms of education for his children. I would underscore that as a very clear-cut right in my mind, because it has been expressed by the Court as far back as 1925.

But to the best of my knowledge, no one has spoken to the point that I think is implicit in what we have been discussing here today. The teachers who want to make careers of teaching children in a system of education where they can impart values and moral bases in an ethical framework have, I think, a right to seek and to find that kind of employment.

Is it not true that the teacher who wants to carry on a relationship with the child not just of secular instruction but also of value instruction, even if it be on a denominational, moral, spiritual, or ethical basis, should have that right somewhere in that educational system?

Mr. McGRATH. I am sure they feel the necessity to do that because we have had that expressed on the part of our teachers many times. They want to teach in our system, they will even work for less money to teach in our system. And in some cases they do.

Mr. CAREY. Are your teachers organized, or seeking to organize?

Mr. McGRATH. Not in our system; no.

Mr. CAREY. Not yet?

Mr. McGRATH. No; you mean union-type organization?

Mr. CAREY. Yes.

Mr. McGRATH. No.

Mr. CAREY. I suspect that day will come. It is a sort of gradual trend across the country. That will probably increase the problem of financing the school. I sympathize with you. I hope we can find a solution.

Your testimony is helpful.

Mr. McGrath. I thank you.

The Chairman. Thank you again, Mr. McGrath, for your testimony and your fine responses to our questions.

Mrs. David C. Riede.

STATEMENT OF MRS. DAVID C. RIEDE, CUYAHOGA FALLS, OHIO

Mrs. Riede. I am Mrs. David Riede from Cuyahoga Falls, Ohio.

The Chairman. You may sit down, Mrs. Riede. You are recognized. We are pleased to have you with us.

Mrs. Riede. The purpose of my request to speak to you is to acquaint you more fully with a parent's view of education today and more particularly a consumer of nonpublic education.

I am a mother of four children and the wife of an educator at a State University. Our children, three girls and a boy, have been educated totally in the Catholic schools of the Cleveland diocese and presently span the grades from 8th to 12th.

We chose nonpublic schools, not because the public schools in our area are not giving a good education, because they are—and have quality programs. We chose the nonpublic school because it presented a philosophy of life which was geared to our home life, and for its goals of education—to prepare the total child for mature adulthood as a qualified candidate for whatever profession he chose, as an American citizen aware of his blessings to live in such a country and his obligations toward it, and finally as a contributing member of this society in which we live.

Again, I must emphasize that I believe this is also possible in the public school system, but, in our own personal evaluation, not to the degree it can be when the home and school environments parallel the same philosophy and goals.

The period of childhood and adolescense in a child's life is a very hard period with many adjustments, many frustrations both in mind and body, and many decisions to make as the maturing individual appears—especially now as that child's peer group has an ever-increasing impact on that student's decisions. It has been our decision to try to make that period as easy as possible for our children by providing, to the best of our ability, a similarity of moral values and overall basic discipline, in the Christian sense, both at home and school where this emerging adult spends most of his day during the period of grade and high school.

Today, as never before, education and schools find themselves in a state of complex change. On the national level, the courts have seen fit to push more and more to protect the rights and beliefs of the individual. As this affects the field of elementary and secondary education, it tends to restrict the schools and the teachers in the area of Judeo-Christian or other moral overtones as a philosophy of those schools.

It tends, further, to produce a sterile, laboratory-type education where subjects are presented and learned in a pure intellectual vacuum, with no overall view to the purpose of education in a child's life and totality, a tying together, as it were, of all the isolated facets of learning which produce the mature contributing adult.

The exception to this occurs in the individual classroom where the teacher interjects this through his or her own example. This precipitates a multiplicity of philosophies with which the student must cope at an age where he is least able to understand the diversity and complexity of the adult human being.

Is this right or wrong? Only time will tell, and since this is a grave question in our minds as parents, we have preferred to take the course we have—to place our children in schools where we know the philosophy and goals of education are similar to ours. Does this produce narrow, biased adults? I think that statistics will show that the products of nonpublic schools have become solid contributing members of our pluralistic society and would at least parallel, if not exceed, in percentages the number of socially aware, substantially sound thinking adults.

But my family is unique. We have been blessed with those material benefits necessary to be able to make this choice in the education for our children and pay for it. There are untold numbers of others who, for similar or diverse reasons, would choose the nonpublic school for the education of their children but cannot afford the luxury.

I am, aside from being a parent and mother of four, also president of the Diocesan Board of Catholic Education of the Diocese of Cleveland. So I represent the parents of over 100,000 children. And it is on their behalf that I feel compelled to speak.

In a country such as ours, with some of the finest systems of education and one of the highest goals for educating all the children of the land, set up by law that we must educate our children to grade 12 or age 16, is it not in accordance with our Nation's ideals and our Constitution that each man be given a choice under the law as to the type of education his child is to receive? And should this not be a free choice, not limited to whether a man can afford it or not? And, is it not a basic philosophy of our Nation that diversity and competition has made our society as great as it is? Diversity and competition in education has helped all schools to attain the excellence they have up to today.

This has been one of the thoughtful conclusions of the President's Panel on Nonpublic Schools and a position on which I wholeheartedly agree. With the rising costs of education in all areas, especially in teachers' salaries (which is a just and necessary area of increase) plus our own particular difficulty in the Catholic schools of the growing lack of religious communities contributing their services to our classrooms, it is no longer possible for the nonpublic, and more particularly the Catholic, school systems, to fully finance our schools.

It is an asset to our schools and a protection for those parents who choose to send their children to nonpublic schools that we must adhere to the State's minimum standards of education. Our philosophy of education is open for all to see. Its basic premise in essence is to educate the total child in the Judeo-Christian tradition.

Other nonpublic schools present their own philosophy and reason for existence. All nonpublic schools must sell themselves with sound, quality education which fulfills the needs and hopes of the parents of the children served, or they will no longer exist. All citizens must pay taxes for the education of all children of the land, which we have done without griping and have done for the public good. By law, we must educate our children and it is my firm belief that we have the right to a choice in the education of our children, and that it must be a right extended to all citizens, not just those who can afford it.

I realize that assistance to parents of children in nonpublic schools is a difficult decision to make under the law and the existing interpretation of the law concerning separation of church and state. But I believe the prime reason for setting up our Catholic schools in the 19th and early 20th centuries has changed. Where our purpose was originally to take our immigrant population and educate them in their religion and the ways of the American society, it has now expanded, along with the public school systems, to educate those children under its care in those subjects necessary for a good foundation in all areas of learning, paralleling the knowledge explosion.

What makes them, and all nonpublic schools unique in education today is their philosophy and goals—that of educating the total person. For this reason, I feel there is room for a new look at the nonpublic school in the area of separation of church and state.

Where before, the concentration was on strict religious teaching and secondarily the basic three R's, today the Catholic school has changed its emphasis from the basic Baltimore catechism approach, to learning with an overall perspective of a philosophy of life based on the Judeo-Christian ideal.

It is time for a new look at the basic premise used to deny assistance to church-related schools. I hope the courts will look at the nonpublic schools of today and see the change of emphasis which has taken place and honestly evaluate the value of this diversity of philosophy in education as a "plus" in this pluralistic society of ours, rather than the school of the ghetto tradition for which we Catholics are famous but which is no longer valid or true.

I believe we have kept the best of the ghetto tradition and generalized it into a philosophy to live by, all the time adapting our educational program to cope with the expansion of knowledge which has taken place in the last 25 years.

The tax credit program which is before you now is a step in the right direction and will allow more citizens of our land to exercise their right of choice. It will also help those nonpublic schools which wish to serve as an alternative to public education for all parents to get down to business and plan for the future of their schools, not being afraid that they must go out of existence because of lack of money.

I ask you to vote favorably on the tax credit bill before you and I invite each of you to visit our schools in the Cleveland diocese. I also hope this invitation can be extended on the part of all nonpublic schools in your districts to see for yourselves the type and quality of education which is today the hallmark of nonpublic education—an education which can serve as a free alternative choice on the part of each parent in this great country for his children.

This, I believe, is the right of every parent under the Constitution of the United States of America.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mrs. Riede, for your very fine statement.

Are there any questions of Mrs. Riede?

Mr. CAREY. Just a brief comment, Mrs. Riede. I think your statement is well delivered, well reasoned, eloquent, and precise in its approach to the problem. But I particularly want to commend you for your attitude which is not only friendly but warmly disposed toward the affairs of public education and the poor people.

The point I want to make for the record was raised for the first time by you. This is a legalistic point, but I think it has been very important in reasoning toward a solution of this problem. In Cleveland, and I find this true elsewhere, the old notion of the parochial school as a God-centered and religiously pervasive institution teaching one set of beliefs on a rigid basis, is not true of the vast majority of these institutions today.

For example, you as a lay person are the representative of the parents and teachers of the nonpublic school system in Cleveland. You are not a clerical person, priest, Brother, or religious person.

Is it true, then, that the laity now has more control and direction over the affairs of the system than had previously been the case in church schools?

Mrs. RIEDE. This is very true. As with everything that is old and profound, it has taken time to change. We are in the process of this transition right now.

Mr. CAREY. This is important, I think, because we have seen on the higher education level that in order to qualify for certain public benefits, some of the higher education institutions have "secularized," to use their term. Maybe there is a better term for it, but they have more clearly defined the lack of relationship, in terms of control, between the church and the institution itself.

I would not want to see you have to sacrifice any philosophy, moral or spiritual beliefs, to get aid. No one would want that.

Mrs. RIEDE. I would be absolutely against anything that would compromise our philosophy and goals.

Mr. CAREY. Would your system be willing to make full financial disclosure of the moneys that were received for education, so that it would be apparent to all who would be either critical or friendly to your school what the money is used for and whether any part of that is being used in any substantial way to aid religion. Would you be able to make that kind of disclosure.

Mrs. RIEDE. Yes. I would say, if you asked tomorrow in the Cleveland Diocese to see our books, I am afraid you would not be able to because we are in the process right now of adapting our business affairs in all areas—parish, schools, social agencies, and that—to a unified bookkeeping system.

If Mr. Byrnes had asked me what the per capita cost was on the part of each child in the elementary school, it would have been very difficult for me to have given you an honest figure.

As the unified bookkeeping system comes in, this material will be readily available, and we do want to have these open and ready for anybody to see.

Mr. CAREY. In closing, I hope that it will continue to be true in the hearings. (I have found it regrettable that some of those who oppose this kind of legislation have chosen deliberately to use what I would consider to be words of animus, stating that the nonpublic schools are discriminatory and selective, that they do not make their services available to the poor, and that they contribute to bias in the community. The scare word that is continually used is "divisive."

I think your statement today, the statements of most of those in favor of the legislation have spoken in commendatory and conciliatory terms of public education, as in your own case, without any aspersions being cast on any other type of education. That is a very healthy sign of an attitude in these schools that we should try to preserve.

Mrs. **Riede**. Thank you. This is one of the reasons I have issued this invitation. I think everyone who sits on this committee should have some opportunity to see for themselves what the nonpublic school today is offering and feel that thing which we cannot describe in these schools; you have to go in, in order to understand what we are trying to do.

The **Chairman**. Thank you, Mrs. Riede. We appreciate your fine testimony.

Mrs. Ripple, we are pleased to have you with us this morning. If you will identify yourself for our record, we will be glad to recognize you.

STATEMENT OF MARY ANNE RIPPLE, MADISON, WIS.

Mrs. **Ripple**. Thank you, Mr. Chairman.

I am Mrs. Mary Anne Ripple, of the city of Madison, Wis. I am a member of the advisory board of Edgewood High School there. Four of my children have graduated from Edgewood High School, and I would like to know that my three younger children will also have the opportunity to graduate from Edgewood.

I am very grateful to have the opportunity to speak to the committee. I would like for a few minutes to tell you about Edgewood High School. It is a high school operated by the Dominican Sisters who make up half of our faculty. The other half of our faculty is lay men and women. We have been of service to the community of Madison since 1881. We have 5,000 alumni. Many present Edgewood parents are themselves graduates of our school.

Eighty percent of our students go on to college. Ninety percent of our students go on to some form of higher education.

In a recent reevaluation of Edgewood High School, which every high school must undergo every 7 years in order to obtain an accreditation, the team of 31 educators and administrators who visited our school for more than 2 days, and they are educators and administrators from the State of Wisconsin, both public and private schools, commended our high school for its great ideas and ideals, its excellent program, and urged the faculty and students of Edgewood High School to continue to be the great Edgewood High School that is is.

We are educating students for less than half the cost of educating students in the government schools.

Mr. Chairman and committee members, it seems incredible to me that in one breath I could describe Edgewood High School as a vigorous and on-going institution, historically and traditionally part of the Madison scene, respected in the city and throughout the State, with students who want to be there and parents who want to send their children there and are willing to pay to send their children there, and in the next breath speak of the imminent demise of Edgewood High School

But, Mr. Chairman and members of the committee, the possibility and, indeed, the probability if parents get no assistance is all too real to us for rising costs dictate rising tuition.

With every raise in tuition we have a drop in enrollment. This year we have a whopping increase in cost and corresponding higher requested contributions to the school, although we are not raising tuition, and we have a corresponding loss in enrollment.

Our parents are making a heroic response to our projected deficit for the students that they have in the school now, but they tell us they cannot enroll their younger children. We can see this is true because our freshman class enrollment is off 27 percent.

Mr. Chairman, and committee members, speaking for myself and many persons of my acquaintance, I would rather not, and we would rather not have come to you with this problem. We would rather not have burdened you with it. We have sacrificed to build our school and to pay our tuition.

For 12 years I have been a volunteer to correct this inequity at the State and local level. Somewhere at some level of government we have to have the vision to see that it is a form of added punishment to the already weary American taxpayer to continue a policy which is forcing all but a few students out of schools which are financed privately and into schools which are financed totally by the taxpayer.

We believe that the Congress has the vision to see the error of this policy and to correct the inequity.

I would like respectfully to point out that public service is not determined by ownership, that there are many privately owned and operated or church affiliated institutions in this country which are performing a necessary and valuable public service and which are getting somehow government subsidy to help them to do this.

Hospitals, universities, nursing homes are some examples of these institutions.

I would claim that Edgewood High School and all others like it are performing a public service of the highest order and therefore it is right and good public policy to encourage the continuation of such schools through the tax credit offered in this bill.

Thank you.

The CHAIRMAN. We thank you again, Mrs. Ripple, for coming to the committee. You have made a very fine statement.

Any questions of Mrs. Ripple?

If not, we thank you, ma'am.

Mrs. RIPPLE. Thank you, Mr. Chairman.

The CHAIRMAN. Michael Ruiter.

If you will identify yourself for the record, we will be glad to recognize you, sir.

STATEMENT OF MICHAEL RUITER, GRAND RAPIDS, MICH.

Mr. RUITER. I am Michael Ruiter. By profession I am an educator. I come here this morning on behalf of my dear wife, our precious four kids, and myself. So I speak as a parent.

The CHAIRMAN. We will be glad to have you as another parent.

Mr. RUITER. Honorable Chairman Mills and members of the committee: I will make my statement as concise and brief as I can and avoid duplicity of statements that have been made this morning and select only those things that I think are germane. My written testimony you already have.

The CHAIRMAN. Without objection that testimony will be included in the record following your oral statement.

Mr. RUITER. Thank you.

I am the father of four children who are being trained in the Christian schools in Grand Rapids, Mich. These Christian schools are nonpublic, nonparochial private institutions owned and operated exclusively by the parents who have membership in the school association. These parents pool their resources to maintain the schools and they elect from their membership a board of trustees which functions comparably to a public board of education.

I sincerely appreciate this opportunity to testify and am pleased that the committee has deemed it important to hear the voices of all those parents as well as institutions, who are concerned with the improvement of education for all children in our Nation.

The education of our children is one of the most important responsibilities of our citizenry. We should therefore use every resource available to us to give all children the best education possible. The future of the nonpublic schools throughout the Nation is one of the most serious problems facing American education today. I believe that all educational institutions which promote the general welfare of society should receive tax relief or support for the services which they render.

Inasmuch as both public and nonpublic schools are educating children under the supervision of the State, and are thereby serving the public welfare, in that they provide an "educated" citizenry, both in my opinion should command the financial support of the government.

Ours is a "nation of the people, by the people, and for the people," and government is established to serve the people. The education of children is the responsibility of their parents. However, parents in our culture have elected to delegate or "farm out" some of their educational responsibilities.

Throughout history the State, the church, and the home have assumed responsibility for the education of children. To discuss the merits or demerits of each of these three institutions as the agencies for formal education is not necessary.

However, I think it is important to note that in the United States all three institutions are granted equal legal protection and the right of existence. In a pluralistic society parents elect to train their children in either public, private, or parochial schools. Freedom in a democracy contains opportunity to teach one's children in a way consistent with his own values and ideals as he elects to do. Freedom of choice in education exists only if alternative choices are available without economic penalty. Such freedom does not exist in our Nation today.

The U.S. Supreme Court, in the oft-quoted *Pierce* v. *Society of Sisters* case, handed down a ruling implying that parents are responsible for determining the type of education which their children are to receive. It did not deny the State a supervisory role, nor did it remove the responsibility of educational institutions from their obligations to the public welfare. The State has the right to establish minimum educational standards, which are required for good citizenship and the general welfare. Thus, government in education fills a supportive role.

It encourages education by providing financial aid, and by promoting conditions which are conducive to educational improvement. In a democratic pluralistic society it is generally understood that Government must be neutral to all its citizens; that is, none must be treated with deference. In a day when social justice is receiving so much necessary attention, as it is today, a plea for action to correct the financial penalty imposed upon nonpublic schools should not go unheeded.

The public and nonpublic schools of our Nation have maintained a sense of shared purposes and have worked as partners in the educational enterprise, while at the same time they have retained there individuality. Each has made a unique contribution to the health and welfare of the nation. We need and want strong public schools; we should also want strong nonpublic schools if we still cherish educational freedom and equity as Americans. In a healthy pluralistic society the public and nonpublic schools need each other. Any efforts by one to inhibit the other can only harm them both. Our capacity to encourage and assist each other, despite philosophic differences, will produce reciprocal benefits, which will enhance educational opportunity for all children.

Currently parents who elect to send their children to nonpublic schools pay twice for educational services. First they pay for public education via taxes, and then they pay tuition costs for nonpublic education.

For example, this year my wife and I have paid $532 in taxes as our obligation for the operation of local public schools in Grand Rapids. A large portion of both State and Federal income tax is also earmarked for public education. To send three of our four children to the Christian schools will cost us $2,470. Payments to both public and nonpublic schools for elementary and secondary education will cost our family this fiscal year in excess of $3,500.

In addition we have elected to send our oldest son to a Christian College, which will demand $1,500 for tuition alone. To say the least, this annual financial outlay for education is excessive, and proves to be a real burden in our family.

The monetary pinch forces sacrifices for the entire family, but the squeeze has other negative consequences. We want our children to attend a school where a cross-section of our society both economically, socially, and racially have opportunity to live and learn together.

As educational costs increase, the financial burden reduces the nonpublic school population so that only the affluent have the option to choose. We want our children to go to a Christian school where both the rich and the poor of all races have the financial means to attend.

In my opinion if a man is taxed to support a school where religious doctrines are inculcated which eh believes to be false, and which he believes God condemns, he is excluded from the school by divine law and at the same time he is compelled to support it by human law. This is a double wrong. And this is exactly the plight of the nonpublic school parent who is religiously opposed to the secularhumanism of the public school. While in fact he is obligated to endorse it with his taxes, he is at the same time forced by conscience to pay his share of the operation of a nonpublic school.

The quest for freedom of choice in education is the heart of the issue in the struggle of citizens to obtain Federal aid for nonpublic school children. Man's history is marked with his continuous struggle for freedom, and none of his battles have been as fierce as those fought for freedom of religion. Freedom of religion comprises not only the freedom to establish and participate in churches that are expansive of one's religious beliefs and commitments. Equally, I believe, it comprises the right to participate in schools which are expressive of one's religious beliefs and commitments.

Parents of nonpublic school students and their supporters take the position therefore that freedom of choice to select a school of their preference is inextricably a function of the freedom of religion.

In my opinion if public lawmakers provide no subsidy for some schools, while granting financial support for others, then there is interference with liberty. If, in fact, Americans are to have freedom of choice in education without penalty, it presupposes financial relief to all officially recognized legitimate educational institutions.

Considered from a purely pragmatic point of view, our Nation cannot afford not to aid nonpublic education. In his message to Congress in March, 1970, President Nixon stated that "if most or all private schools were to close or turn public, the added burden on public funds by the end of the 1970's could exceed $4 billion per year in operation, with an estimated $5 billion more needed for facilities."

When one computes the cost of educating children in public schools versus the cost of aiding the education of these same children in private institutions, it is obvious that the lesser financial burden would be tax credit to assist private education.

In addition, current levels of per-pupil cost in public schools would be more difficult to maintain if nonpublic schools were closed, aside from the tremendous costs that would be required to purchase or build the necessary buildings.

Thank you kindly for this opportunity to appear before you this morning. God bless you in the effort that you are expending and, as you know so well, the wheels of justice grind slowly and so does the Government, but we encourage you to act post-haste. Thank you very much.

The CHAIRMAN. Dr. Ruiter, I want to congratulate you on a very fine statement. You did not duplicate other testimony. It was a fine statement.

Are there any questions of Dr. Ruiter?

If not, again we thank you, sir.

Mr. RUITER. Thank you very much.

(Mr. Ruiter's prepared statement follows:)

PREPARED STATEMENT OF MICHAEL T. RUITER, GRAND RAPIDS, MICHIGAN

Honorable Chairman Mills, and Members of the Committee: My name is Michael Ruiter. I am the father of four children who are being trained in the Christian schools in Grand Rapids, Michigan. These Christian Schools are nonpublic, nonparochial private institutions owned and operated exclusively by the parents who have membership in the School Association. These parents pool their resources to maintain the schools and they elect from their membership a Board of Trustees which functions comparably to a public Board of Education.

I sincerely appreciate this opportunity to testify and am pleased that the Committee has deemed it important to hear the voices of all those who are concerned with the improvement of education for *all* children in our Nation.

GENERAL WELFARE

The education of our children is one of the most important responsibilities of our citizenry. We should therefore use every resource available to us to give all children the best education possible. The future of the nonpublic schools throughout the nation is one of the most serious problems facing American education today. I believe that all educational institutions which promote the general welfare of society should receive tax relief or support for the services which they render. In as much as both public and nonpublic schools are educating children under the supervision of the State, and are thereby serving the public welfare, in that they provide an "educated" citizenry, both should command the financial support of the government.

EQUAL RIGHTS

Ours is a "nation of the people, by the people, and for the people", and government is established to serve the people. The education of children is the responsibility of their parents. However, parents in our culture have elected to delegate or "farm out" some of their educational responsibilities. Throughout history the state, the church, and the home have assumed responsibility for the education of children. To discuss the merits or demerits of each of these three institutions as the agencies for formal education is not necessary. However, it is important to note that in the United States all three institutions are granted equal legal protection and the right of existence. In a pluralistic society parents elect to train their children in either public, private, or parochial schools. Freedom in a democracy contains opportunity to teach one's children in a way consistent with his own values and ideals as he elects to do. Freedom of choice in education exists only if alternative choices are available without economic penalty. Such freedom does not exist in our nation today.

GOVERNMENT NEUTRALITY

The United States Supreme Court, in the oft quoted Pierce vs. Society of Sisters case, handed down a ruling implying that parents are responsible for determining the type of education which their children are to receive. It did not deny the State a supervisory role, nor did it remove the responsibility of educational institutions from their obligations to the public welfare. The state has the right to establish minimum educational standards, which are required for good citizenship and the general welfare.

Thus, government in education fills a supportive role. It encourages education by providing financial aid, and by promoting conditions which are conducive to educational improvement. In a democractic pluralistic society it is generally understood that government must be neutral to all its citizens; that is, none must be treated with deference. In a day when social justice is receiving so much necessary attention, a plea for action to correct the financial penalty imposed upon nonpublic schools should not go unheeded.

MUTUAL BENEFIT

The public and nonpublic schools of our nation have maintained a sense of shared purposes and have worked as partners in the educational enterprise, while at the same time they have retained their individuality. Each has made a unique contribution to the health and welfare of the nation. We need and want strong public schools; we should also want strong nonpublic schools if we still cherish educational freedom and equity as Americans. In a healthy pluralistic society the public and nonpublic schools need each other. Any efforts by one to inhibit the other can only harm them both. Our capacity to encourage and assist each other, despite philosophic differences, will produce reciprocal benefits, which will enhance educational opportunity for *all* children.

Currently parents who elect to send their children to nonpublic schools pay twice for educational services. First they pay for public education via taxes, and then they pay tuition costs for nonpublic education. For example, this year my wife and I have paid $532.00 in taxes as our obligation for the operation of local public schools. A large portion of both state and federal income tax is also earmarked for public education. To send three of our four children to the Christian Schools will cost us $2,470.00.

Payments to both public and nonpublic schools for elementary and secondary education will cost our family in excess of $3,500,00. In addition we have elected to send our oldest son to a Christian College, which will demand $1,500.00 for tuition alone. To say the least this annual financial outlay for education is excessive, and proves to be a real burden. The monetary pinch forces sacrifices for the entire family, but the squeeze has other negative consequences. We want our children to attend a school where a cross section of our society both economically, socially, and racially have opportunity to live and learn together. As educational costs increase, the financial burden reduces the nonpublic school population so that only the affluent have the option to choose. We want our children to go to a Christian school where both the rich and the poor of all races have the financial means to attend.

UNFAIR PENALTY

In my opinion if a man is taxed to support a school where religious doctrines are inculcated which he believes to be false, and which he believes God condemns, he is excluded from the school by divine law and at the same time he is compelled to support it by human law. This is a double wrong. And this is exactly the plight of the nonpublic school parent who is religiously opposed to the secular-humanism of the public school. While in fact he is obligated to endorse it with his taxes, he is at the same time forced by conscience to pay his share for the operation of a nonpublic school.

FREEDOM OF CHOICE

The quest for freedom of choice in education is the heart of the issue in the struggle of citizens to obtain federal aid for nonpublic school children. Man's history is marked with his continuous struggle for freedom, and none of his battles have been as fierce as those fought for freedom of religion. Freedom of religion comprises not only the freedom to establish and participate in churches that are expansive of one's religious beliefs and commitments. Equally it comprises the right to participate in schools which are expressive of one's religious beliefs and commitments. Parents of nonpublic school students and their supporters take the position therefore that freedom of choice to select a school of their preference is inextricably a function of the freedom of religion. In my opinion if public law makers provide no subsidy for some schools, while granting financial support for others, then there is interference with liberty. If, in fact, Americans are to have freedom of choice in education without penalty, it presupposes financial relief to all officially recognized legitimate educational institutions.

ECONOMIC FEASIBILITY

Considered from a purely pragmatic point of view, our nation can't afford not to aid nonpublic education. In his message to Congress in March, 1970, President Nixon stated that "if most or all private schools were to close or turn public, the added burden on public funds by the end of the 1970's could exceed $4 billion per year in operation, with an estimated $5 billion more needed for facilities". When one computes the cost of educating children in public schools versus the cost of aiding the education of these same children in private institutions, it is obvious that the lesser financial burden would be tax credit to assist private education. In addition, current levels of per-pupil cost in public schools would be more difficult to maintain if nonpublic schools were closed, aside from the tremendous costs that would be required to purchase or build the necessary buildings.

SUMMARY OF COMMENTS AND RECOMMENDATIONS

1. Freedom of choice in education exists only if alternative choices are available without economic penalty. In a day when social justice is receiving so much necessary attention, a plea for action to correct the financial penalty imposed upon nonpublic schools should not go unheeded.
2. Failure to assist nonpublic schools will assure their demise. The average family in our society simply can't afford to pay the price and the peanlty.
3. Nonpublic schools constitute a parallel to the public education system in that they provide the same essential secular services to children. With the exception of religious content and religious references, the curriculum of the elementary and secondary schools is substantially the same in public and nonpublic institutions. Thus, it may be said accurately that the nonpublic schools which, although privately controlled, are in the public service, and are contributing to the growth and development of American society.
4. The government can't afford not to assist the parents of nonpublic school children. It will be more economical to make a partial payment for educational

costs in maintaining nonpublic schools than to pay the full cost for those children who are forced by financial coercion to attend public schools. Thus the continued existence of nonpublic schools also bears importantly on the future strength of the public educational system in our nation.

5. Recommend that the Congress take action yet this calendar year to alleviate the burden of parents who send their children to nonpublic schools.

6. Recommend that tax credit be the legislative means of implementing aid to assist the parents of children who attend nonpublic schools.

7. Recommend that the entire spectrum of tax bills be considered in order to realize maximum benefit for those low income families who need it most.

The CHAIRMAN. Mrs. Alma Wilson, Pensacola, Fla.

Mrs. Wilson, we are pleased to have you with us this morning. If you will identify yourself for our record, we will be glad to recognize you.

STATEMENT OF ALMA WILSON, PENSACOLA, FLA.

Mrs. WILSON. I am Mrs. Alma Wilson from Pensacola, Fla. I am the mother of 11 children. I am here to represent the parents——

The CHAIRMAN. What is the age range, Mrs. Wilson?

Mrs. WILSON. My youngest child is 8. My oldest is 35.

The CHAIRMAN. We are pleased to have you with us and you are recognized.

Mrs. WILSON. Mr. Chairman, members of the committee, I am here to speak in regard to tax aid for the parents of non-public-school children, to help take the burden off the parents and save our nonpublic schools.

It would mean a lot to us to be able to save our nonpublic schools and be able to keep our children in Catholic schools. The school that I represent has 250 school children in grade school. It is very hard to keep the shool open. We give fall and spring festivities. I have done schoolbus driving, candied apples, helped with cake sales. When other parents said, "I can't bake a cake," I would say, "meet me at the school cafeteria; I will help you."

The cost of the tuition is $125 a child in grammar school; $300 per child in high school. Now I have three children in school, one in grammar school and two in high school. This makes it much more difficult because I have two tuitions to pay which I didn't have before, but to pay one tuition, St. Joseph School combined with Pensacola Catholic High.

Now, Mr. Chairman, it is much harder when I had six children in school because I didn't have but one tuition. When I was going to school, I had to walk 3 miles to school through a mud jungle with wild animals around me, some days traveling alone because other children would not attend every day because it was too far to walk, sometimes too cold, raining too hard, but I would attend. If the class got kept in for being naughty, I had to run the 3 miles to get home before dark.

That is why I am interested in education for my children and the best education for my children. I work two jobs 9 months out of the year to pay for tuition because I have two tuitions to pay. It is very hard for me because I get up every morning after school ends in the year at 5 o'clock to work. I will be at work at 6:30 in the morning and work until 2:30 in the afternoon.

But during the school term I have to work a job in the morning and a job in the afternoon to keep my tuition going and to help support my children in Catholic schools.

I am here to ask for some kind of aid to help us so that it won't be so hard because I have 10 more years with my baby in the third grade; I have 10 more years to pay tuition.

I am here asking in behalf of the nonpublic schoolchildren parents for a little aid.

The CHAIRMAN. Does that complete your statement, Mrs. Wilson?

Mrs. WILSON. Yes.

The CHAIRMAN. I want to congratulate you not only on your very fine statement, but to congratulate you on the dedication, inspiration, and desire you have to see to it that your children go to school. I have often thought that perhaps it is the mother in the family that always has the ambition for her children to do these things, more so than us fathers. I certainly congratulate you.

Mrs. WILSON. Thank you very much.

The CHAIRMAN. Are there any questions of Mrs. Wilson? You know the rule of the committee: we always save the best for the last.

Mrs. WILSON. Thank you.

The CHAIRMAN. Thanks for coming.

That concludes the calendar for today.

Without objection, the committee will adjourn until 10 o'clock on the morning of September 5, when we reconvene.

(Whereupon, at 11:50 a.m., the committee adjourned, to reconvene at 10 a.m., Tuesday, September 5, 1972.)

TAX CREDITS FOR NONPUBLIC EDUCATION

TUESDAY, SEPTEMBER 5, 1972

House of Representatives,
Committee on Ways and Means,
Washington, D.C.

The committee met at 10 a.m., pursuant to notice, in the committee room, Longworth House Office Building, Hon. James A. Burke presiding.

Mr. Burke. The committee will please come to order.

On our list of witnesses today, our first witness is Edward J. Ennis, chairman of the board of directors, American Civil Liberties Union. Is Mr. Ennis here?

Mr. Ennis. Yes. Good morning.

Mr. Burke. Good morning. We welcome you to the committee. If you will identify yourself for the reporter, you may proceed with your testimony.

STATEMENT OF EDWARD J. ENNIS, CHAIRMAN, BOARD OF DIRECTORS, AMERICAN CIVIL LIBERTIES UNION

Mr. Ennis. Mr. Chairman, my name is Edward J. Ennis, chairman of the board of directors of the American Civil Liberties Union, which is an organization of over 180,000 members and a wholly nonpartisan, nonpolitical organization which has only one purpose, and that is to protect and advance the application of the Bill of Rights, the first 10 amendments of the Constitution of the United States, which we feel are directly involved in title II of H.R. 16141, which proposes to give a tax credit to parents who pay tuition for children in nonpublic, or in private, schools.

We appreciate that we are speaking of a tax credit of up to $200 really to parents of children in the Catholic elementary and secondary schools in our country. I am sure I have no personal bias in this matter because I myself have had the benefit of 16 years of Catholic education, 8 years from the nuns of the Sisters of Charity, and 8 years from the Benedictine Fathers. But I do know as a result of that education that religion does permeate a Catholic education because I have personally experienced it.

Now, we have submitted a memorandum for the consideration of the committee, and therefore, I will be rather brief in my oral remarks.

Although I will make some policy suggestions, the principal interest of the American Civil Liberties Union is in the constitutional question raised by this bill. There is no provision of our Constitution that is more peremptory in its prohibition than the first words of the first amendment of the Constitution which provides that "Congress shall make no law respecting an establishment of religion."

Now, we have come to realize as a result of 600 or 700 pages of Supreme Court opinions since the *Everson* case in 1947, that although the text is short and peremptory, the meaning is not absolutely clear because "respecting an establishment of religion" is not wholly self-explanatory. But the Supreme Court has adopted for our instruction one explanation of those words which is really very clear, first stated in *Everson* and then repeated in every opinion which the Supreme Court has rendered since that time, down to the opinion in the *Kurtzman* case last year.

The important words are that "The establishment of religion clause means at least this: * * * No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion."

It is our submission to this committee that the preemptory language of the text of the Constitution as explained repeatedly by the Supreme Court of the United States prohibits the proposal which is before us. We feel that tuition and a payment to parents directly related to tuition, which directly supports the religious school system, is as direct as any tax or any payment of money that could be made to the schools.

The amount at first may not seem very large, up to $200 to parents which pay up to that much or more. But if the Congress of the United States opens up this Pandora's box by providing tax funds of the American taxpayers to the parochial school system, it will inevitably plunge our country into the kind of political contest which it was the whole purpose of the first amendment to prevent. It will breach the separation of church and state, and the Congress of the United States should be the last institution which would begin to open that breach.

The Chief Justice of the United States has cautioned us in the last opinion of the Supreme Court in the *Kurtzman* matter that "we cannot fail to see that in constitutional adjudication, some steps which when taken were thought to approach the verge, have become the platform for yet further steps. A certain momentum develops in constitutional theory and it can be a 'downhill thrust' easily set in motion but difficult to retard or stop."

If this Congress adopts a provision of refund of $200 to a parent, what is to prevent a political activity from attempting to increase that to a thousand dollars for parents who pay as much and may pay as much for such education? Immediately we will be thrown into candidates for public office and voters choosing their positions on legislation based upon their religion. The mischief that is involved in that kind of political contest is incalculable, and the door should be slammed at the beginning by this committee refusing to adopt such a bill.

Now, in addition to such a payment being plainly an aid to religion, about as direct an aid as one can obtain, the next step to simply giving tax money directly to the parochial school, is giving it to the parents who have already paid to the public schools; the same thing.

We suggest that such legislation will enter into a thicket of constitutional litigation because the second religious clause of the Constitution provides that Congress shall pass no law prohibiting the free exercise of religion. But if this Congress gives public funds to parochial schools, immediately the activities of those schools which are now under the religious clause free of a public aspect immediately obtain a public aspect because they are in effect expending public funds.

What will immediately happen to their present freedom to pick their students as they wish, not to be limited by the strictness of equal protection clause applicable to public institutions on race, color, or creed. Are the Catholic schools as a result of up to $200 credit to parents going to be told that now as public institutions they must accept students regardless of either race or religion? Because it is clear that the constitutional and equal protection of the law follows Federal funds. If the Federal funds go to religious schools, the equal protection clause of the Constitution and due process clause of the fifth amendment regulates the way in which those funds should be expended.

What this Congress would be doing would be immediately starting a spate of Federal litigation all over the country reexamining the freedom of activity of religious schools to see whether they were now complying with the equal protection of the law which is demanded by the Constitution of the United States.

Now, I won't attempt to quote the opinions in the *Kurtzman* case of Mr. Justice Brennan or Mr. Justice White which make this point specifically, that if we get into giving money to religious schools we are going to have to control to some extent the activities of those schools in the expenditure of such funds. Immediately the religious schools which are now the beneficiaries of the great *Myers* decision which says the States may not prevent or control religious education will immediately become subject to such public control, and this is the kind of mischief which we should avoid.

Now, I am going to make just one statement not only in respect of the constitutional considerations but really policy considerations. But before doing that, I would like to call an item to the committee's attention, and that is, I have been informed that a prior witness had suggested that Prof. Paul Freund, professor of constitutional law at Harvard Law School, and a former colleague of mine in the Solicitor General's Office of the United States, had indicated that this credit might not be unconstitutional. We understand that Professor Freund's position is exactly to the contrary, and his position has been stated in a memorandum supplied to the President's Commission on this matter, and as soon as we can get it released we will supply a copy for the committee's consideration. But it is not correct that Professor Freund has indicated that any credit of this kind would be constitutional under the first amendment.

Now, the policy objections of course are that there is only so much money for education, and to the extent that we embark upon any program of taking public funds and putting them in the private or religious schools education area, inevitably to that extent we are going to attack and diminish the public education system in the United States, which is one of our greatest achievements, and that the educational system is laboring under enough difficulties, it needs all the money that the Congress and the State legislatures can provide to it. To put it under the disability of competing for public funds with private and religious educational systems would be most unfortunate. The practical effect would be that we would begin to create two educational systems: the private one for the white and middle class and a public educational system and inferior one for the black and the poor and the disadvantaged. Certainly the Congress of the United States should avoid any such result.

I don't have to tell this committee that many religious organizations, aware of the precious importance to them of freedom of religion, are opposing the giving of any funds to religious schools which would inevitably carry with it a certain degree of necessary constitutional control under the due process and equal protection clauses of the Constitution.

Now, in concluding I merely would like to suggest that this committee knows better than I do that it is a primary guardian of the public funds of the United States. Any recommendation that this committee makes in matters of revenue, appropriation of revenues, receives the greatest respect from all of your colleagues in the Congress. A very special responsibility falls upon this committee for its members to observe their individual constitutional oath to uphold the Constitution of the United States by not passing legislation which the judicial precedents indicate would be unconstitutional. This is not a situation where this committee and the Congress should throw the matter into the hands of the Supreme Court and say, "Well, we will pass the legislation and if the Supreme Court finds that it is not constitutional, it can so hold."

Legislation which involves the appropriation of funds and the distribution of funds will precede any constitutional decision. It sets up its own mischief even if such legislation is held unconstitutional by the Supreme Court. Parents of children in Catholic schools and religious schools will have expectations which will be defeated. Indeed, actual credits may be granted the refund of which will have to be sought. This is the kind of mischief which this committee and the Congress has a primary obligation to avoid. The only way to avoid it is to face up to this important governmental question and to conclude that the Constitution means what it says when, in very plain language, it says that this Congress shall pass no law involving the establishment of religion.

Thank you very much for your attention, and if there are any questions which I might be able to answer I will be happy to try.

Mr. Burke. Mr. Ennis, do you want your entire statement to appear in the record as presented here?

Mr. Ennis. Yes; if that is agreeable to the committee, I would like my statement to appear.

Mr. Burke. Without objection, it is so ordered.

Mr. Ennis. Thank you

(Mr. Ennis' prepared statement follows:)

Statement of Edward Ennis, on Behalf of American Civil Liberties Union

The American Civil Liberties Union is a nationwide, nonpartisan organization of over 180,000 members solely dedicated to defending the liberties guaranteed by the Bill of Rights of the United States Constitution, including the religious clauses of the First Amendment. The Union has consistently opposed both federal and state legislation believed to constitute an uncontitutional aid to religion.

Title II of H.R. 16141 proposes to grant a federal income tax credit of up to $200.00 to any taxpayer for tuition paid to any private non-profit elementary or secondary school for education of any dependent in respect of whom the taxpayer is allowed a federal tax exemption. It is submitted that such a provision would be unconstitutional on several grounds and members of Congress should, in obedience to their individual oaths to uphold the United States Constitution, refuse to enact such a provision, thus throwing upon the Courts the necessity of holding it unconstitutional.

It is further submitted that such a provision would be unwise as a matter of public policy.

ESTABLISHMENT OF RELIGION

The First Amendment expressly provides that "Congress shall make no law respecting an establishment of religion***." In *Everson* v. *Board of Education*, 330 U.S. 1, 16 (1947) the Supreme Court instructed us as to the meaning of this constitutional provision as follows:

"The 'establishment of religion' clause of the First Amendment means at least this. ***No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between Church and State'."

In numerous decisions since *Everson* the Supreme Court has repeated the above quoted statement as the basic meaning of the Establishment Clause of the First Amendment. Any governmental services to church-related schools which the Court has said satisfy the requirements of the First Amendment have been ideologically neutral (e.g., bus transportation, lunches, secular textbooks). Tuition payments go to the heart of the learning process and can hardly be classified as "ideologically neutral." Unlike other services which have been upheld, tuition is not an incidental matter of health, safety, or welfare.

Even if Title II embodied a legislative determination that the secular aspects of nonpublic education could be separated from the sectarian and allowed a credit only applicable to the secular, it would still fall as entailing "excessive government entanglement," the criterion upon which the Supreme Court decided *Lemon* v. *Kurtzman*, 403 U.S. 602 (1971), which is the latest decision of the Court on the subject of federal aid to nonpublic schools. *Kurtzman* held unconstitutional laws of Pennsylvania and Rhode Island authorizing public funds to be used to supplement salaries of teachers of secular subjects in religious schools or reimbursing such schools for such expenses.

Equally as important as the letter of the *Kurtzman* opinion is its spirit. Written by Chief Justice Burger, the spirit of the opinion is that the line should be held where it has traditionally been drawn. As if to communicate its awareness (and disapproval) of other attempts to get public aid to church-related schools, the Court said:

"Nor can we fail to see that in constitutional adjudication some steps, which when taken were thought to approach the verge, have become the platform for yet further steps. A certain momentum develops in constitutional theory and it can a 'downhill thrust' easily set in motion but difficult to retard or stop."

The Chief Justice also wisely pointed out in the *Kurtzman* opinion that such public aid and demands for its continuation, increase, decrease, or termination will divide both voters and candidates for office along religious lines which "was one of the principal evils against which the First Amendment was intended to protect."

It has been estimated by the Department of Treasury that the proposed credit will cost the taxpayers as much as $970 million annually. It is clear that a direct appropriation of federal funds to religious schools or teachers therein would be unconstitutional. It is just as unconstitutional to attempt to do the same thing indirectly by reimbursing parents from federal funds for payments of tuition to religious schools.

Recently in *Lemon* v. *Sloan* (E.D. Pa. 1972) a three-judge Federal District Court ruled unconstitutional Pennsylvania's latest attempt to provide state funds to religious schools by payments to parents and stated:

"By providing parents with additional funds because they have paid tuition at nonpublic schools, the Commonwealth is trying to insure the continued ability of the parents to afford tuition costs and therefore the continued existence of nonpublic schools, including sectarian schools. The necessary effect of such a program, if it is to succeed, is that the school will be aided by state funds. The state cannot maintain that the Act has the purpose of promoting education by supporting nonpublic schools and then deny that the effect of the Act is to aid the schools."

FREEDOM OF RELIGION

The First Amendment also expressly provides that Congress shall make no law prohibiting the free exercise of religion. Although Title II does not contain a nondiscrimination provision, equal protection standards would now have to apply to nonpublic schools in order to satisfy the requirement that public funds not be used to encourage discrimination on the basis of race, color, creed, or national origin. The proposed legislation thus raises a question under the Free Exercise Clause of the First Amendment. In his concurring opinion in the *Kurtzman* case, *supra*, Mr. Justice Brennan quoted with approval the opinion of the Lower Court in that case as follows:

"Applying these standards (equal protection) to parochial schools might well restrict their ability to discriminate in admission policies . . . and in hiring and firing of teachers. At some point the school becomes 'public' for more purposes than the church would wish. At that point, the church may justifiably feel that its victory on the Establishment Clause has meant abandonment of the Free Exercise Clause." (Quoted from 316 F. Supp. 121, 122.)

Circuit Judge Hastie, dissenting from the decision of the Federal District Court in Pennsylvania which was reversed in the *Kurtzman* case, said that the constitutionally necessary degree of constraint on religious schools in respect of any discrimination by them would make the public aid program an unconstitutional restriction on freedom of religion (310 F. Supp. at 52). Mr. Justice White, the lone dissenter in *Kurtzman*, also pointed out that "if such proof were made (that any of the involved schools restricted entry on racial or religious grounds or required all students gaining admission to receive instruction in a particular faith) the legislation would to that extent be unconstitutional."

This constitutional dilemma which would be created by in effect making public funds available to religious schools and thereby subjecting them to the constitutional requirements of equal protection of the law prohibiting discrimination based on race or religion and thus infringing their freedom of religion should be avoided by the Congress by rejecting the proposed legislation.

PUBLIC POLICY OBJECTIONS

Title II is based on the false premise that declining nonpublic school enrollment is due to financial factors and that public aid is necessary to save the parochial school system. The available authoritative studies indicate convincingly that shrinking enrollment in parochial schools is in fact due to such pervasive causes as falling birth rates and changing parental tastes. These studies conclude that public aid would not retard the enrollment decline.

If the proposed legislation does achieve its purpose, in spite of these predictions, nonpublic school enrollment will increase, which enrollment will be almost exclusively or disporportionately white, which in turn will increase the percentage of nonwhite enrollment in public schools, in turn causing more white parents to enroll their children in private schools. The ultimate result will be the development of two school systems: a public system predominantly nonwhite, poor, and inadequate and a private system predominantly white, affluent, and superior. (The likelihood of this occurring is even greater if the tax credits are not refundable, thus preventing lower income citizens from taking advantage of them. Although the explanation of the bill contained in the Committee Print indicates that the credits will be fully refundable, there is no provision for refundability in the bill itself.)

Title II ignores the deep controversy within the churches themselves about the dangers of governmental control inherent in the bill. These dangers were alluded to in the context of the First Amendment argument. The point is that the churches "cannot have it both ways," as Justice Jackson put it in the *Everson* case. He went on to say:

"Religious teaching cannot be a private affair when the state seeks to impose regulations which infringe on it indirectly, and a public affair when it comes to taxing citizens of one faith to aid another, or those of no faith at all. . . . If the state may aid these religious schools, it may therefore regulate them."

Several church spokesmen have heeded these words and therefore oppose public aid for their schools. The Committee has heard testimony from the Baptist Joint Committee on Public Affairs opposing Title II. When the Minnesota legislature passed a tax credit measure, the Seventh Day Adventist Conference sent a letter to their congregations asking that they not apply for tax credits.

Title II also ignores the fact that the public has consistently opposed tax aid to private and parochial schools. In polls conducted by Americans United for Separation of Church and State in March, 1970, citizens of Maryland opposed tax aid 62.5% to 35.3% and Illinois citizens opposed ii 59% to 39.2%. A similar poll conducted in Ohio in July, 1971, showed residents opposing tax aid 61.7% to 37%. An anti-parochiaid amendment passed by an overwhelming margin in a November, 1970, referendum in Michigan.

A further objection to Title II is that it would set an undesirable precedent for the states. Most state constitutions, either written at a time when the need to protect public schools from sectarian influences was greater or amended to reflect the need, contain stricter separation provisions than does the Federal Constitution. The logical strategy of supporters of public aid to religious schools is to incorporate aid to parochial schools in a series of federal education bills, even if the aid is peripheral and financially inconsequential, in order to set legislative precedents. Indeed, this strategy was adopted as early as 1958 at a meeting of Catholic School Superintendents (*Bulletin*, National Catholic Educational Association, August, 1959). Should Title II set in motion a series of related enactments at the state level, the potential damage to the public school system already discussed becomes even greater.

Finally, especially at a time when public schools are in demonstrably dire financial straits, the cost of Title II cannot be justified. As the Committee Print acknowledges, the revenue loss which would result from tax credits would obviously require "a corresponding offset either by way of expenditure reduction or revenue increase." (Page 20.) An expenditure reduction would leave a great many citizens angry and alarmed at Congress' choice of priorities. A revenue increase would necessitate higher taxes—angering even more citizens and impairing their rights under the Free Exercise Clause by compelling them to pay taxes, proceeds of which were being used to finance parochial school tuition.

Mr. Burke. Now, you referred to an opinion of a law professor from Harvard?

Mr. Ennis. I said in former testimony I was informed that Professor Freund had been quoted as supporting the pending bill. I wish to correct that impression. I am informed that, quite to the contrary, Professor Freund has stated that such legislation would impinge on the Constitution. But his official statement in this respect is in the form of a report to a Presidential commission. I am undertaking to get release of that. When we do that we will have some witness who is appearing before you submit that for your consideration.

Mr. Burke. Without objection, it will appear in the record at this point.

Mr. Ennis. Thank you, Mr. Chairman.

(The report referred to follows:)

[Prepared for President's Commission on School Finance]

Public Aid for Church-Related Education: Federal Constitutional Problems

(By Paul A. Freund)

This memorandum is concerned only with elementary and high schools (except as decisions concerning universities throw light on the problem) and with the impact of the U.S. Constitution, not with the sometimes more restrictive state constitutions.

Constitutional Framework.—The First Amendment contains two pertinent clauses: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . ." The non-establishment and free-exercise clauses often reinforce each other, as would be the case if Congress were to require that persons attend Mass as a condition of naturalization. On occasion, however, the two clauses may pull in opposite directions, as where Congress provides an exemption for military service only for those whose conscientious objection to war is based on religious training and belief. From one point of view the exemption constitutes respect for the free exercise of religion; from another, it can be regarded as furnishing support for religious training. The Supreme Court has avoided this inner tension by giving the legislative exemption a liberal construction to include those whose objection is based on a conscientious belief that occupies in the mind and life of a non-theistic objector a place equivalent to a belief held by a more conventionally "religious" person. *U.S.* v. *Seeger*, 380 U.S. 163 (1965).

The non-establishment guarantee is the one particularly involved in issues of public aid to parochial schools. As an original question it might have been held that the guarantee prohibits only governmental preference granted to a certain religion or to certain sects, but the interpretation has been broader. It might also have been held that the guarantee is not applicable against the States through the Fourteenth Amendment's general guarantee of liberty and property against deprivation without due process; but since the 1940's the Fourteenth Amendment has been held to embody all the guarantees of the First.

A much-quoted definition of non-establishment is that of Justice Black in *Everson* v. *Board of Education*, 330 U.S. 1 (1947): "The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. . . . No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa." The Justice then quoted Jefferson's "wall of separation."

Subsequently it will appear that the proscriptions of laws that "aid all religions" cannot be taken literally. Indeed, in the *Everson* case itself the majority, through Justice Black, sustained the New Jersey law that provided payment for bus fares of children attending non-profit private and parochial as well as public schools, a subsidy that no doubt "aided" the religious activities of the parochial schools, though the basis for sustaining the law was the legitimate secular interest in safety of children on the streets. The four Justices who dissented (Jackson, Frankfurter, Rutledge, and Burton) protested that the majority were not applying their proposed standards to the case. Justice Douglas, one of the majority of five, later declared that he now felt the case to have been wrongly decided.

At this point it will be useful to set forth the principal decisions of the Supreme Court bearing on the non-establishment guarantee.

Bradfield v. *Roberts*, 175 U.S. 291 (1899) upheld a federal construction grant to a hospital operated by a religious order. The decision, which is still cited with approval, pointed out that the hospital was not operated to advance the cause of the religious order but was maintained for the medical treatment of patients on a nonsectarian basis.

(Incidentally, neither that case nor others support the proposition that the fact of incorporation under general law, as compared with ownership by the Church or Bishop, is decisive on the constitutional question. The issue is not one of form but of substance; the form may be relevant as one item of evidence bearing on the substance of what the institution does and is designed to do. The decision in *Speer* v. *Colbert*, 200 U.S. 130 (1906), which has been cited to the Commission for the importance of general incorporation, did not involve the First Amendment at all. It presented the question whether a bequest to Georgetown University fell within a Maryland statute making void gifts within 30 days of death to "any religious sect, order or denomination." In construing this provision not to apply, the Court pointed to the terms of the charter of the University. Clearly a more formal criterion is appropriate in interpreting such a provision than in applying the constitutional guarantee).

Cochran v. *Louisiana*, —— U.S. —— (1931) upheld the furnishing by a state of textbooks to parochial schools; but the case was decided before the Fourteenth Amendment was held to embody the guarantees of the First, and the issue decided was only that the grant was not void as being made for a non-public purpose. The issue has become not one of purpose, but of effect and involvement from the standpoint of church-state relations.

Pierce v. *Society of Sisters*, 268 U.S. 510 (1925) held that a state could not, consistently with the liberty-due process clause, require all children to attend public schools. The case involved both parochial and non-church-related schools, and no special weight was given to the free exercise of religion; indeed, as already stated, that guarantee had not then been absorbed against the states. The decision stressed the liberty of parents to choose the kind of school in which their children would be educated, and the liberty of teachers as well. Of course there was no occasion to consider what implications, if any, the decision might have for a state's constitutional power to give financial aid to church-related schools. At this point it is enough to note that to argue from the premise that a state must accept private schools as satisfying the compulsory attendance laws to the conclusion that therefore the state must support the private schools is a form of logic that few would advance. The issue is not one of logical inference, but rather whether government may, if it chooses, support parochial-school education in some way as a means of implementing parental choice consistently with the policies underlying the non-establishment clause. Thus we recur to our basic question.

Everson v. *Board of Education*, 330 U.S. 1 (1947), already referred to, upheld, 5 to 4, the reimbursement of parents for bus fares paid to a public transportation system for the transportation of children to and from school, including parochial schools. While noting that the establishment clause was historically directed against taxation for the support of religious training, Justice Black's opinion viewed the bus-fare program as akin to the furnishing of public services such as fire and police protection to all alike; surely traffic officers, the Court remarked, may serve to protect all children, regardless of the nature of their school destination. The bus service was deemed a safety measure, a public-welfare benefit of general applicability that carried only an incidental benefit to the school.

McCollum v. *Board of Education*, 333 U.S. 203 (1948) held unconstitutional, with one dissent, a program of released time education in the public schools, whereby religious teachers employed by private religious groups were permitted to come to the schools for 30 minutes a week for voluntary instruction in lieu of other exercises of the school. Justice Black's opinion concluded: "Here not only are the state's tax-supported public school buildings used for the dissemination of religious doctrines. The State also affords sectarian groups an invaluable aid in that it helps to provide pupils for their religious classes through use of the state's compulsory public school machinery. This is not separation of Church and State."

Where, however, religious devotion or instruction in outside religious centers was made possible by a system of released or dismissal time for students whose parents so requested, the plan was upheld. *Zorach* v. *Clauson*, 343 U.S. 306 (1952). The 7 to 2 decision, per Douglas, J., analogized the plan to the excusal of individual students to attend outside religious services on their religious holidays. Reaffirming *McCollum*, the Court nevertheless felt that to extend it to the present case, where no publicly supported facilities were used, would evince hostility to religion rather than a constitutional mandate of separation.

After *McCollum*, there should have been no great surprise over the unanimous school-prayer decisions. *Engel* v. *Vitale*, 370 U.S. 421 (1962) held unconstitutional an officially composed prayer which pupils were to recite at the opening of each school day, with provision for excusal of those whose parents objected. *Abington* v. *Schempp*, 374 U.S. 203 (1963) struck down a similar program, where daily reading from the Bible, without comment, or a prayer, utilized selections made by participating students.

The opinion noted that here the non-establishment and free-exercise clauses coalesced in their impact, though the emphasis was on the former. Concurring, Justice Brennan stated that we "may not officially involve religion in such a way as to prefer, discriminate, or oppress, a particular sect or religion. Equally the Constitution enjoins those involvements of religions with secular institutions which (a) serve the essentially religious activities of religious institutions; (b) employ the organs of government for essentially religious purposes; or (c) use essentially religious means to serve governmental ends where secular means would suffice."

It should be remarked that the exemption privilege in the prayer cases did not save the program under the establishment clause. In contrast, when Jehovah's Witnesses challenged the flag salute in public schools as a religious ceremony they were simply held to be entitled to an exemption. *Board of Education* v. *Barnette*, 319 U.S. 624 (1943). The point of the comparison has relevance to our problem.

It is occasionally argued that since the Court has given a broad meaning to religion, as in the conscientious objector cases, it follows that the "secular humanism" conveyed in the public schools is a form of religion, and therefore the government must (or may) maintain neutrality by giving support to education in sectarian religious schools as well. The argument is really a play on the word religious. The broad definitions have been accepted for purposes of the free exercise guarantee, to protect idiosyncratic beliefs having the force of religion for the believer; but to adopt a similarly broad conception of the non-establishment clause would place conventionally secular governmental programs in bizarre jeopardy. Thus, a Christian Scientist may refuse a blood transfusion for himself at a municipal hospital, because he regards it as religious (sinful), but it hardly follows that the program must be abolished, or that to maintain neutrality the government must pay for the services of a practitioner of religion who performs for the believer the function that surgical intervention performs for the rest of the community. Free exercise and non-establishment cannot be equated in their definitions of what is religion or religious.

Board of Education v. *Allen*, 392 U.S. 236 (1968), by a 6 to 3 decision, upheld a New York statute providing for the loan of secular textbooks to all pupils in grades 7 through 12 of all schools, including private and church-related schools. Books were required to be approved by a public board of education and were books designated as texts in the school attended. The majority, through Justice White, treated the case somewhat abstractly, in the absence of a factual record, as raising the question whether such a plan was necessarily invalid. Citing the bus-fare decision, the opinion acknowledged that "perhaps free books make it more likely that some children choose to attend a sectarian school," but asserted that "the financial benefit is to parents and children, not to schools," since "the books are furnished for the use of individual students and at their request." (opinion, note 1). The Court declined to conclude, on the "meager record" before it, "that the processess of secular and religious training are so intertwined that secular textbooks furnished to students by the public are in fact instrumental in the teaching of religion." Dissents were delivered by Justice Black, the author of the bus-fare opinion, who protested that that decision, which went to the "verge", was being distorted, in view of the ideological difference between transportation and teaching from textbooks, and by Justices Douglas and Fortas, who perceived in the plan more involvement between church and state than the majority were prepared to find.

The *Allen* decision, resting as it did on a barren record and dealing with a limited subject-matter, was equivocal in nature. It might mark a new base on which the Court could build constitutional doctrine favorable to other kinds of aid, as the Court seemed to build on the bus-fares case, or it might turn out to be limited to its special facts. The directional signals were not at all clear. The majority seemed unready for a more definitive and comprehensive analysis of principles.

Walz v. *Tax Commission*, 397 U.S. 664 (1970), marked the beginning of such an analysis. Although it involved exemption of church property from property taxation, and not expenditures for education, the approach can be seen to have foreshadowed the recent decisions on governmental payments. Chief Justice Burger wrote for the Court, with only Justice Douglas dissenting.

The opinion stresses the continuous history of tax exemption for church-owned property, extending through almost 200 years, the uniform course of decisions upholding it, and the absence of any appreciable controversy or political-religious divisiveness on the issue. It is enjoyed by all churches, regardless of their doctrinal tenets, and by a multitude of other charitable and educational institutions. The tradition of exemption and the broad generality of its coverage are significant not only on historical grounds but also as muting the involvement of church and state, by virtue of the long tradition and the generality of the practice, which does not focus on a sectarian issue.

The Chief Justice considers whether there is a secular purpose in the exemption and concludes that there is. The purpose is neither the advancement nor the inhibition of religion, but the protection of many institutions devoted to moral and mental improvement from the inhibiting burden of taxation and the risk of loss of their properties for nonpayment of taxes. A legitimate purpose "does not end the inquiry, however. We must also be sure that the end result—the effect—is not an excessive government entanglement with religion." On this issue the opinion marshals a congeries of characteristics that leave tax exemption on the safe side of the line. Taxability would actually raise more problems of involvement than exemption. As noted above, history and generality minimize the risk of excessive involvement. This is "benevolent neutrality." It is in no realistic sense a "foot in the door" or "the nose of the camel in the tent."

Justice Brennan, concurring, likewise stressed history and tradition, and the "breadth of this scheme of exemptions," which "negates any suggestion that the State intends to single out religious organizations for special preference." Moreover, in contrast to subsidies, although both provide economic assistance, exemptions are a "passive" involvement. "Thus, 'the symbolism of tax exemption is significant as a manifestation that organized religion is not expected to support the state; by the same token the state is not expected to support the church.' "

Justice Harlan, also concurring, emphasized the criterion of neutrality, both for its own sake and as an assurance of non-involvement. "The Court must survey meticulously the circumstances of governmental categories to eliminate, as it were, religious gerrymanders. In any particular case the critical question is whether the circumference of legislation encircles a class so broad that it can be fairly concluded that religious institutions could be thought to fall within the natural perimeter." Although exemptions and subsidies are alike as an economic matter. "Subsidies, unlike exemptions, must be passed on periodically and thus invite more political controversy than exemptions." Justice Harlan reserved for a later case, however, the question of direct aid or subsidies, when it would be necessary to consider "the significance and character of subsidies in our political system and the role of the government in administering the subsidy in relation to the particular program aided."

The decisions of June 28, 1971.—By far the most relevant decisions are those of the Supreme Court on June 28, 1971. The decisions are especially significant because the cases holding unconstitutional certain state aid for secular instruction in parochial schools were decided with only one dissenting vote (White, J.), and Federal building grants to universities, as applied to church-related institutions, were upheld only by a close 5 to 4 vote.

Lemon v. *Kurtzman* struck down a Pennsylvania law that appropriated funds for the "purchase of services" in parochial (as well as other private non-profit) schools. The services purchased were a part of teachers' salaries, textbooks, and instructional materials for "secular subjects." The statute prohibited reimbursement for any course containing "any subject matter expressing religious teaching, or the morals or forms of worship of any sect." Textbooks and materials for which reimbursement could be received had to be approved by the Superintendent of Public Instruction, who in fact was authorized to make the "purchases." Schools seeking reimbursement were required to maintain prescribed accounting procedures that identify the "separate" cost of the "secular educational service," these accounts were subject to state audit.

Early v. *DiCenso* struck down a Rhode Island law providing a 15 percent salary supplement for teachers in parochial (and private non-profit schools) at which the average per-pupil expenditure on secular education is below the average in public schools. Eligible teachers were required to teach only courses offered in the public schools, using only materials used in the public schools, and to agree not to teach courses in religion.

It is obvious that each state undertook carefully to avoid the constitutional pitfalls of unconditional, across-the-board subsidy of parochial schools. Each state attempted to identify and separate the "religious" and "secular" components of the educational process in these schools. These efforts proved unavailing. The more the state strove to escape the pit of outright financial support of the religious activity of sects maintaining schools, the more the state became mired in the entanglement of church and state through surveillance, audits, the likelihood of continual pressure for increased aid, and intensified political divisiveness of religious sects arrayed against each other in the continual struggle over the government budget.

Thus a program of state aid poses a dilemma: it must not foster a particular religion or set of religions, or "primarily" give financial support to religion generally; but in seeking to divorce the secular from the religious aspects of the beneficiaries the program must not unduly entangle state and church. This is what Justice White, dissenting, characterized as the "insoluble paradox for the State and the parochial schools. The State cannot finance secular instruction if it permits religion to be taught in the same classroom; but if it exacts a promise that religion not be so taught—a promise the school and its teachers are quite willing and on this [Rhode Island] record able to give—and enforces it, it is then entangled in the 'no entanglement' aspect of the Court's Establishment Clause jurisprudence." Even Justice White, however, would have remanded the Pennsylvania case for a trial to determine the truth of the allegation in the complaint that in fact there is a "blending of sectarian and secular instruction," in which case there would be an invalid "financing of religious instruction by the State."

The opinion of the Chief Justice, for the rest of the Court, is based rather on a "conflict of functions [that] inheres in the system." The system is "dedicated to rearing children in a particular faith," so that "the potential for impermissible fostering of religion is present." The Court here was speaking of subsidized teachers. Similarly with the Pennsylvania program of "purchase of services", the Court was impressed by inherent dangers: "The government cash grants before us now provide no basis for predicting that comprehensive measures of surveillance and controls will not follow."

The Court's opinion does not contain—indeed it disavows—any neat formula for determining the line of unconstitutionality in the area of public aid to church-related education. Conclusions and forecasts must be based on the Court's analysis, the language and spirit of the opinions, and the explanations given of related precedents.

The Court's analysis is in terms of three "cumulative criteria": "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion [citing language in the *Allen* case]; finally, the statute must not foster 'an excessive government entanglement with religion' [citing the *Walz* case]."

On the score of purpose, the statutes were not vulnerable, for they were intended to enhance the quality of secular education. On the score of primary effect, the Court found it unnecessary to decide the point beyond observing that the legislatures recognized the need for precautions to guarantee the separation of religious and secular activities as beneficiaries of programs of public aid. The Court passed, then, to the criterion of entanglement. Under this criterion the Court managed to consider the several policies that underlie the non-establishment guarantee, notably voluntarism, neutrality as between religions or between religion and non-religion, and avoidance of undue involvement of the state in the affairs of a church, and of churches in the affairs of the state. The emphasis is on neutrality and the issue of involvement. The two are merged in this statement by the Chief Justice: "Here [distinguishing *Walz* on exemption from tax] we are confronted with successive and very likely permanent annual appropriations which benefit relatively few religious groups."

The spirit of the opinion, if it can be put concisely, is that the line should be held where it has been traditionally drawn. "We have no long history of state aid to church-related educational institutions comparable to 200 years of tax exemption for churches. Indeed, the state programs before us today represent something of an innovation." (Justice Brennan's concurring opinion emphasized the constitutional tradition in the states as well as on the national level against public subsidies to church-related schools. Justice Brennan stressed the danger to religion from dependence on governmental aid, a threat as much in the background of the First Amendment as the cognate threat of intermeddling by churches in governmental processes.) The court warns against the "momentum" and "downhill thrust" that are set in motion by a decision that goes to the "verge," particularly in a field where pressures, if yielded to, can be expected to mount.

Nowhere is there explicit encouragement or suggestion that is some different form the aid to church-related education could be upheld. The concluding passage in the opinion seems designed to encourage, on the contrary, self-reliance by church-related schools: "The merit and benefits of these schools, however, are not the issue before us in these cases. The sole question is whether state aid to these schools can be squared with the dictates of the Religion Clauses. Under our system the choice has been made that Government is to be entirely excluded from the area of religious instruction and churches excluded from the affairs of government. The Constitution decrees that religion must be a private matter for the individual, the family, and the institutions of private choice, and that while some involvement and entanglement is inveitable, lines must be drawn." The constitutional lines are drawn in these cases, deliberately, in a non-"innovative" way.

Tilton v. *Richardson* sustained, 5 to 4, the federal construction grant program for colleges and universities, with the qualification that the prohibition on use of the constructed facilities for sectarian instruction or worship or in connection with any divinity-school program must extend through the life of the facilities. For the majority, the Chief Justice distinguished the cases involving elementary and high schools, on the ground of a difference in principal or primary effect of the programs and in the extent of entanglement.

The record disclosed no evidence that the four church-affiliated institutions in the case imposed religious restrictions on admissions, required attendance at religious activities, compelled obedience to doctrines or dogma of a faith, or sought to indoctrinate students or to proselytize. If such a pattern were shown, a challenge could be made to the application of the fedral statute. On the issue of entaglement, the Court pointed out that university education is characteristically marked by critical internal intellectual standards and the relative independence of mind of the students. With a different mission from the church-affiliated schools, with a more religiously diverse student body and faculty, there is less need for intensive governmental surveillance to determine whether government aid is supporting religious activities. However, the facilities furnished are non-ideological and the aid is not continuing but on a one-time, single-purpose basis.

"No one of these three factors standing alone is necessarily controlling; cumulatively all of them shape a narrow and limited relationship with government which involves fewer and less significant contacts" than the state plans in the school cases. The absence of "religious aggravation on this matter in the political process" may possibly be explained "by the character and diversity of the recipient colleges and universities and the absence of any intimate continuing relationship or dependency between government and religiously affiliated institutions." In fact, it was stated during the debates on the bill in the Senate that of all colleges and universities 743 were public, 515 private nonsectarian, and 842 sectarian. 109 Cong. Rec. 19495. The spread of beneficiaries is reminiscent of the point made in *Walz* on tax exemption, and contrasts vividly with the concentration of beneficiaries of state special school-aid programs, where the vast majority in the class of new beneficiaries are enrolled in schools affiliated with certain churches.

Policies of the Religion Clauses and Standards to Vindicate Them.—The foregoing analysis and résumé of decisions has reflected certain basic policies embodied in the religion clauses of the Constitution. These may be succinctly stated as voluntarism, official neutrality, and the God-Caesar principle, avoidance of undue involvement of the churches in the state and of the state in the churches. Each of these policies has a kind of delusive simplicity about it. As was said by Justice Harlan, concurring in *Walz* v. *Tax Commission*, 397 U.S. 664, 694 (1970), "I think it relevant to face up to the fact that it is far easier to agree on the purpose that underlies the First Amendment's Establishment and Free Exercise Clauses than to obtain agreement on the standards that should govern their application. What is at stake as a matter of policy is preventing that kind and degree of government involvement in religious life that, as history teaches us, is apt to lead to strife and frequently strain a political system to the breaking point. Two requirements frequently articulated and applied in our cases for achieving this goal are 'neutrality' and 'voluntarism' " (citing Goldberg, J., in the *Schempp* case, 374 U.S. 203, 305, and *Engel* v. *Vitale*, 370 U.S. 421).

Voluntarism of religious belief and practice is a policy embodied in both the free-exercise and establishment clauses. The more egregious forms of state intervention to advance or inhibit religion would at once run afoul of this guarantee. It would forbid alike a requirement or a prohibition of church attendance. Voluntarism includes the policy of religious *pluralism*, respect for a diversity of sects and beliefs. And yet the fostering of pluralism by the state does not necessarily mean that such a measure is consistent with the First Amendment, as, for example, if a state, concerned over the concentration of church membership in a few sects, were to offer a bonus to new sects as they attracted more members. Here the fostering of pluralism would obviously clash with the co-ordinate constitutional policy of neutrality.

Neutrality is a concept of notorious subtlety, like equality or equal treatment, with which it is closely allied. In considering whether the state is acting non-neutrally, it is essential to be clear about what activities or institutions are being compared. Neutrality is like a prism, through which an object may take on different appearances depending on how the prism is held to the eye of the observer.

To take a homely example, suppose that a state requires a formal ceremony of all who seek to be married, and that it maintains at public expense a free public service to that end. Some couples are obliged by religious conviction to eschew a civil ceremony and exchange their vows in church before a minister. This form of ceremony satisfies the legal requirement. Must, or may, the state compensate the minister or reimburse the couple for the expense involved? Is it non-neutral to do otherwise? The anser may depend on how we view the comparability of the two ceremonies. Is the church wedding simply the equivalent of the civil wedding with something added, or is it different enough to conclude that the aid given to religion is not a form of neutrality? Suppose that in a high school public-speaking class the pupils are required to memorize and recite a passage of their choice that has particularly impressed them by its loftiness of spirit. Some choose a speech of Lincoln, others the Lord's prayer. Would a disqualification of a prayer be non-neutral? The answer may depend on how the prayer is viewed, whether as equivalent to a noble secular address or as essentially different because of the devotional or ritualistic component; this may depend in turn on the atmosphere of the delivery.

In comparing public and parochial schools the Court found an essential dissimilarity. In comparing universities the Court found an essential similarity. (If, as is sometimes asserted, some public schools are in actual operation sectarian in their presentation of materials, the remedy would seem to be not the support of avowedly church-related schools but the correction of the conditions in the public school. This was the course pursued successfully with respect to the excision of Darwinian biology from the curriculum, which was held unconstitutional as a violation of the establishment clause. *Epperson* v. *Arkansas*, 393 U.S. 97 (1968).

There is a further complexity in using the concept of neutrality in the context of parochial-school education. Comparison must be made not only between religion-oriented and non-religious activities but between the activities and institutions of different religious groups. If, for example, support were given to church-related schools, those sects that are doctrinally and actually opposed to the fusion of religious and "secular" education could complain that as to them the support was non-neutral. Religious education, they could argue, is conducted by them in Sunday schools, and to the extent that the religious component of education is supported by aid to parochial schools, support is likewise due to the Sunday schools of the separationist sects. Thus the contest for state support in the political arena arrays sect against sect, doctrinally and institutionally, each in the name of neutrality. We are led at this point to the policy of mutual avoidance of undue involvement of church and state.

Avoidance of undue involvement in each other's affairs is a guarantee of both religious and political integrity. The First Amendment reflects both Jefferson's concern for the political process and Jonathan Edwards' for the religious: in Edwards' "The Garden and the Wilderness' he warned of the dangers if the wilderness of the state were to invade the garden of the church.

Undue involvement, or entanglement, may take the form of surveillance by government, intermeddling by church or state in decision-making by the other, or involvement of the sects in the political process as a concomitant of governmental involvement in the domain of religion. ". . . government involvement, while neutral, may be so direct or in such degree as to engender a risk of politicizing religion. (Harlan, J., in *Walz* v. *Tax Commission*, 397 U.S. 664, 695).

Of course religious beliefs do influence attitudes and positions in the political process, whether concerning abortion or obscenity or divorce. Public aid to church-related education, however, presents the problem in a particularly acute and compounded form. Here we are dealing with political involvement (a) on an *institutional* basis, where a church seeks to secure public aid for the very functioning of the religious institution itself, and not merely to advance a position on an issue of public policy on which a religion has something relevant to say; (b) where the political focus is centered on the religious (sectarian) aspect directly and overwhelmingly, not incidentally or collaterally; (c) where the sects themselves will be in political conflict because of their doctrinal differences; and (d) where, if support is given, the institutionally divisive issue becomes open-ended, of a kind that is ongoing and calculated to escalate. Of course religious institutions have rights of expression, but these are not always identical with those of other groups. Thus, in the political arena, a pacifist party would clearly be legitimate, but the same could not be said of the Quaker party.

It is instructive to recall how the criteria of neutrality and non-involvement have been applied, in turn, to property-tax exemption, federal building subsidies to universities, and subsidies to non-public schools. In so doing one can appreciate the highly sensitive concern of the Court for the policies of neutrality and non-entanglement, and the discerning practical approach the Court has taken in differentiating the cases.

In order to effectuate these constitutional policies, the Court has examined legislation from the point of view of *purpose* and of *effect*. Rarely can a law in this area be found to have an illegitimate purpose. Even school prayers were designed to serve the educational purpose of creating an atmosphere of serenity and humility in the classroom. A law that required belief in God as a condition of holding state office was doubtless enacted in order to help assure honest and faithful civil servants; yet despite its praiseworthy purpose it was ruled unconstitutional. *Torcaso* v. *Watkins*, 367 U.S. 488 (1961). The more crucial question, in most cases, is whether a legitimate purpose is being achieved through measures that produce or require illegitimate *effects*. Such effects are those that conflict with the policies of the religious guarantees: voluntarism, neutrality, and mutual avoidance of undue involvement. These have already been discussed.

Conclusions on Specific Forms of Aid.—In light of the decisions and the constitutional philosophy they reflect, what are legitimate and illegitimate forms of aid for church-related education? Some warrant clearer answers than others.

Bus fares.—Although one member of the Court who was in the majority of five in the *Everson* case (Douglas, J.) has since recanted, it is reasonably clear that the decision is stable. The analogy to general welfare services like fire and police is a strong one. The ambit of the service is highly diffused, it is removed from the content of the educational process, and it has only an incidental effect on the support of religious education.

Other welfare services: lunches, vaccinations, nurses' care. These services belong, in my judgment, with bus fares. They protect the health of children wherever the children are found at school. The fact that church-related schools may be relieved of a cost they might otherwise assume is not decisive in so general, non-ideological a welfare program. This is not to subscribe to the dichotomy between "child-benefit" and "school-benefit" sometimes suggested. Candor and realism compel the acknowledgment that both benefit here as they would in a program of general financial grants to the schools. It is not a question of identifying child or school as the beneficiary, but of maintaining neutrality (generality), minimal ideological impact, and non-entanglement of church and state.

Textbooks.—The *Allen* case was distinguished, not overruled, in the recent decisions. The distinctions are not very solid ones (e.g., Justice Brennan in *Lemon* pointed to an obscure fact in the *Allen* case, that the costs of books had previously been borne by the parents, not the schools, and so the aid was to the former rather than the latter—a highly formalistic and adventitious distinction). Justice White, the author of the *Allen* opinion, dissented in the recent cases, a fact pointing up the divergence of the decisions. Nevertheless, I believe that in the interest of stability of judicial decision *Allen* will continue to be followed, but limited to its facts, i.e., to the loan to pupils of approved "secular" textbooks, perhaps on the analogy of a public lending library.

Equipment, facilities, etc.—The Pennsylvania plan, held invalid, included provision for the purchase of "secular" teaching materials, not limited to books. The great difficulty the Court had insustaining even building grants for universities, upheld in considerable measure because of the difference between church-related universities and church-related schools, indicates that the latter could not be made the beneficiaries of a similar program merely because buildings are "non-ideological" facilities.

Shared time.—Some students of the subject regard shared-time programs as invalid, even though public-school facilities and teachers are used. There is, to be sure, the risk of political involvement by the churches in promoting and perhaps unofficially administering the program, and if the pupils from parochial schools are placed in separate classes there is also a certain invidious segregation on the basis of religion. Nevertheless I believe that the plan can be regarded as a valid arrangement whereby parochial-school pupils are treated, at their request, as part-time public-school pupils. There is, of course, indirect aid to the religious component, but the inherent control and supervision within the public schools, where I assume the instruction would be the same for all, mitigates the involvement. There is some analogy to the form of released-time for religious instruction outside the public school, sustained in the *Zorach* case, although the proportion of time outside the public school is of course substantially different.

Grants to pupils or families; Voucher plans.—To route public subsidies for church-related education to pupils or families rather than to the institutions serves to highlight the purpose of fostering pluralism and freedom of choice. But these purposes are plainly inherent as well in direct grants to the institutions, as the supporters of such grants rightly argued when their validity was still unsettled. The purpose in either case is a proper one; the issue turns on effects. To predicate a different constitutional result on a change in the mechanics of the payment of public funds would trivialize the constitutional guarantees and the decisions enforcing them. (The differences between payments and exemptions from property tax are, on the other hand, substantial, as elaborated in the *Walz* case already discussed.) Grants to individuals might not contain restrictions on use like those dealt with in the recent Pennsylvania and Rhode Island "purchase of services" cases; but this circumstance only shifts the plan to the other horn of the dilemma, where the comparable plan of institutional subsidy would be unconditional, across-the-board payments to the church-related schools in proportion to the number of students enrolled in each. Such a plan would stand no more firmly, to understate the point, than those held unconstitutional.

A voucher plan providing for limited grants would simply be a variation in form. But a voucher plan as conceived by some proponents of new departures in education would provide total-cost grants per pupil that would enable a family to broaden its range of choice to include a variety of educational enterprises, old and new. Such a full-payment plan, whereby a voucher would be usable at public, private, church-related, cooperative, and other experimental kinds of schools, might be viewed as a measure whose principal impact would not be on church-related schools but on a significantly wider constituency. In this respect a full-cost voucher plan would differ in its effects from direct subsidies or fiscal supplements to families for non-public school education. The plan might be regarded as containing safeguards of neutrality and non-involvement akin to those in tax exemptions applicable broadly to charitable and philanthropic institutions, including those having affiliations with a wide spectrum of religious groups.

There would be a certain irony in sustaining a full-cost voucher plan that included church-related schools while holding invalid systems of merely partial aid; but the perimeters of the plan, affecting its scope and character, would be different. The focus of the political issue would not be on support of religious school; greater diffusion of benefits among a broad constituency, as with tax exemptions and grants to universities, would mean diluting the risk of "religious gerrymandering" against which Justice Harlan warned.

I am by no means confident that a full-scale comprehensive voucher plan would be valid. I only suggest that constitutionally it holds greater promise than a program of modest but not self-limiting grants to pupils that would produce the same effects under the present pattern of education as those to the institutions themselves, held to be unconstitutional.

Whether a voucher system would entail, as a corollary, non-preferential practices and other conditions on church-related schools is considered at a later point.

Tax deductions and credits.—Deductions and credits against income taxes for part or all of the costs of non-public school tuition and related expenses raise similar questions of neutrality, generality, and involvement. A large measure of discretion rests with the legislature in determining the definition of net income for tax purposes, but deductions and credits are not outside the sphere of constitutional constraints; surely a deduction for contributions only if made to a Protestant church would be clearly beyond the pale. Like grants to pupils or families, deductions or credits avoid some problems of administrative entanglement, but again at the cost of indirectly furnishing aid to the total enterprise of a religiously affiliated school. As in the case of tuition grants, the problem might be mitigated by the breadth and scope of the interests that would benefit.

Thus, for example, contributions to churches are included in charitable deductions; they fall within the broad contours of the category. A deduction or credit for expenses of non-public school attendance would not, in my judgment, stand on surer ground that grants to pupils or families for that purpose. The similarity is underscored when we consider what would probably be a necessary corollary, in economic fairness, to deductions or credits, namely, a form of negative tax or payment, to those whose incomes are below the line at which a deduction or credit would have an opportunity to attach.

Breadth and generality, diffusion or benefits and dilution of political-religious entanglements, might be secured by extending the deduction or credit (and ancillary payments) to a wide range of expenses incurred on behalf of a child's educational, cultural, and physical development, e.g., expenses for extracurricular instruction, including religious instruction, books, athletic lessons, etc. Of course the ultimate point on the spectrum would be simply an increase in tax allowances for children, perhaps geared inversely to the gross income of the parent.

Preferential or exclusionary policies of schools.—If some form of tuition grants or tax credits were attempted, what would be the consequences for the internal policies and practices of non-public schools? The giving of governmental financial support would alter the "private" character of the schools, at least in some respects, for purposes of bringing them under the constraints of the Bill of Rights applicable to government itself. This result would most clearly follow with respect to discrimination in admissions or employment based on race, color, or national origin. Justice Douglas, in his dissent in *Lemon* v. *Kurtzman*, pointed out (n. 17) that "Grants to students in the context of the problems of desegregated public schools have without exception been stricken down as tools of the forbidden discrimination." (Citations omitted.)

Religious preferences or discrimination in church-relate schools presents a more subtle question. Racial discrimination or segregation is repugnant to our national policy, while religious separatism is an aspect of the pluralism that is part of our tradition. And yet the problem remains of the extent to which government may give support to institutions that exclude or discriminate on religious lines. The question was faced by Judge Coffin in the three-judge court in the Rhode Island case. His opinion, which ruled the act unconstitutional, was quoted with approval by Justice Brennan: "Applying these standards [equal protection to parochial schools might well restrict their ability to discriminate in admissions policies, . . . and in hiring and firing of teachers. At some point the school becomes 'public' for more purposes than the Chruch would wish. At that point, the Church may justifiably feel that its victory on the Establishment Clause has meant abandonment of the Free Exercise Clause." (Quoted from 316 F. Supp., at 121-122.)

Judge Hastie, dissenting in the three-judge court in the Pennsylvania case (a position upheld by the Supreme Court) went even further, suggesting that the necessary degree of constraint on church-related schools would make the program of aid itself unconstitutional: "Yet, once the state joins in financing such education, the mandated equalitarian position of the state must result in state imposition of strictly non-discriminatory admission standards consistent with public duty, whatever sacrifice of appropriate religious objectives may result. I cannot square such state intrusion into religious affairs with the concept of separation of church and state which the First Amenmdent implements." (310 F.S. at 52).

Moreover, Justice White, although favoring the validity of the Pennsylvania and Rhode Island statutes, adverted to the situation "if the evidence in any of these cases showed that any of the involved schools restricted entry on racial or religious grounds or required all students gaining admission to receive instruction in the tenets of a particular faith. For myself, if such proof were made, the legislation would to that extent be unconstitutional."

In the context of grants to pupils or tax credits, perhaps these questions of equal protection would be mitigated, like the question of the basic validity of such plans, as the breadth of the plans increased, so that as practical freedom of choice increased, the effect of internal preferential policies would be diluted. But the problem is a serious one, and may give pause to the proponents of aid, as it did to the judges who have been quoted.

Appendix

We have been asked to consider specifically certain state and federal legislative plans, all drafted before the decisions of June 28, 1971.

The plans fall into two categories, grants to families and tax credits.

In the first category are measures in Illinois, Maryland, Vermont, and the House of Representatives.

The Illinois bill (S.B. 1196) provides for grants to low-income families, limited in use to education in secular subjects and activities. Supervision is to be under the Superintendent of Public Instruction. The difference from the invalid "purchase of secular services" plans is, in my judgment, merely formal. The case for validity would be stronger as the ambit of grants to families was enlarged.

The Maryland bill (ch. 7) provides for scholarships to non-public schools, geared in amount inversely to parental income. A voucher system is employed. Open enrollment is mandated, except for preference to students presently enrolled. Presumably no other constraints on religious practices in the schools are contemplated. The plan appears vulnerable in the same way as the Illinois plan. The horn of general aid is substituted for that of "secular" instruction, but the dilemma remains.

The Vermont measure (No. 114) provides for state aid to towns and school districts, available for non-public as well as public schools. The aid is for transportation, advanced instruction, supervision and teachers' salaries, limited to secular subjects. The plan appears to be invalid except for transportation of pupils.

H.R. 128 provides for per-pupil grants to parents for education or to public school districts. The plan appears invalid under the principles already discussed.

In the second category are the Minnesota plan and H.R. 1067.

The Minnesota plan (ch. 944) provides for a limited tax credit for expenditures on tuition, fees, and textbooks in non-public schools, with a provision for grants to low-income parents where the credit is unavailing. As set forth in the foregoing memorandum, a tax credit plan runs afoul of basic constitutional objections of political-religious entanglement unless, perhaps, the credit is extended to a broader range of expenditures for the child's intellectual and moral development.

H.R. 1067 provides for a tax deduction for expenditures at non-public schools. This plan is vulnerable in the same way as a tax credit, with the added objection that a deduction, unlike a credit, becomes more valuable as the taxpayer's bracket grows higher.

Mr. Burke. Are there any questions?

Mr. Conable.

Mr. Conable. Mr. Ennis, apart from the merits, can you tell me if there is any constitutional distinction between refundable and the nonrefundable possibilities for the tax credit that is suggested by this bill? Do you see anything more objectionable constitutionally if the $200 is made available to everyone regardless of whether or not they paid a tax?

Mr. Ennis. I said in my statement that this of course favors in a sense the wealthier class, those who have money, and works against the poor parents who may have to spend money, little as they may have, to send their children to a religious school, but would not get the benefit. We think that that is a denial of the equal protection of the laws. That would fall unequally.

Mr. Conable. You think it is less objectionable constitutionally to have a refundable credit?

Mr. Ennis. Yes. Our position is that under equal protection of the laws it should be refundable even though that might cause more public funds to go to parents of children in religious schools which we are fundamentally opposed to.

Mr. Conable. Thank you, Mr. Chairman.

Mr. Burke. Are there further questions?

Mr. Gibbons.

Mr. Gibbons. Mr. Ennis, I don't know of any issue that I currently have in my office that has created more mail than this unless it is the Bayh gun control bill. I get an equal amount of mail on this bill and the Bayh bill. It has been a long time since I studied the history of the adoption of the first amendment.

As I seem to recall, what was happening in Virginia about the time the U.S. Constitution was adopted is exactly what is proposed to be done here. Am I correct in that?

Mr. Ennis. Yes, and in the Virginia bill, which is discussed in the various opinions, for example, the *Walz* case, which I urged in the U.S. Supreme Court. Mr. Justice Douglas in his dissenting opinion laid out that whole history. I looked at it coming down on the plane this morning.

Not to take up the time of the committee, but very simply, when it was proposed that a tax be placed upon citizens, they could designate the religious organization to which it would go, which christian sect, they did not contemplate anything else at that time and they said in the absence of designation this small tax would then be routed to an educational institution. This created a tremendous furor in the Virginia Legislature.

As a result of that furor, and Madison's remonstrance which was written at that time, this legislation was defeated as contrary to the principles upon which this country was founded, that the separation of church and state should be maintained by no financial aid, no Government money to any religion.

Mr. GIBBONS. As I recall, Patrick Henry was the author of that legislation.

Mr. ENNIS. Yes. Patrick Henry was on the proponents' side of that legislation which was defeated largely as a result of Madison's position.

Mr. GIBBONS. Isn't that the genesis of the first amendment?

Mr. ENNIS. Yes.

Mr. GIBBONS. Isn't that particular piece of legislative activity the genesis of our first amendment?

Mr. ENNIS. Yes; the Virginia experience is what finally resulted in the first amendment. When the Constitution was adopted in 1789, Virginia and New York and Massachusetts almost failed to adopt the Constitution because it did not have attached to it these limitations upon the new Government, upon Congress. In my State of New York, for example, I think the vote in the adopting convention was 30 to 27. The Constitution was barely adopted and the only reason it was adopted is because our Founding Fathers assured the State conventions which were considering the Constitution that the first thing the new Congress would do if the Constitution was adopted was to adopt a Bill of Rights including this first amendment.

Of course, when the Constitution was adopted, true to their promise, the first thing that the first Congress did was propose the Bill of Rights which became this limitation upon the powers of Congress.

Mr. GIBBONS. Now, Madison's remonstrances in the Virginia Legislature are carried over in the U.S. Constitution.

Mr. ENNIS. Yes.

Mr. GIBBONS. As I recall, he was the chairman of the Conference Committee of the U.S. House of Representatives that finally drafted the first amendment.

Mr. ENNIS. That is correct. He was the chairman of the committee of the first Congress which drafted the Bill of Rights which, as adopted, is our present first 10 amendments.

Mr. GIBBONS. Therefore, in your opinion there could be no doubt about the meaning of an establishment of religion going back to the Virginia controversy and Madison's participation in that, Jefferson's participation?

Mr. ENNIS. I have no doubt about that, but, Mr. Gibbons, I must say in all frankness that since we have a couple of precedents which say you can give the children buses and you can give them some books, that the proponents of such legislation seized upon this as a suggestion that if you don't give the tax money to the school, but somehow give it to the parent that you might fall under the busing case or the free lunch case, that you are giving it to the children and you are not giving it to a religious institution. We feel reasonably confident that in view of the Supreme Court's decision in the *Kurtzman* case that kind of approach will not stand constitutional analysis and that giving money to a parent directly related to a payment of money which the parent has made to a religious institution is support of the religious institution.

We think that this Congress should resolve it and not start going an engine of giving Federal funds to a religious institution which the

Supreme Court will then be required to unwind and with all of the disappointments and refunds and all of these problems, there will be millions of refunds, it will be a terrible mess, really, to undo.

Mr. GIBBONS. Thank you very much.

Mr. BURKE. Are there further questions?

Mr. CAREY. Mr. Chairman.

Mr. BURKE. Mr. Carey.

Mr. CAREY. Thank you, Mr. Chairman.

If I have any reaction at this time of your testimony, which is very persuasive, it is that I am a little disappointed that you regard the issue as susceptible to such simplistic resolution.

For instance, in the colloquy just concluded, you say that this bill would give aid to religious institutions. I should think you would want to correct that. There is nothing in this bill which gives aid to religious institutions per se. Is that correct?

Mr. ENNIS. That is correct.

Mr. CAREY. Would you stand corrected on that point?

Mr. ENNIS. Yes, Mr. Carey. Perhaps I was making a lawyer's argument. We think that paying $200 to a parent because the parent has paid that much in tuition to a religious school is aid to the institution, but there is no suggestion in the bill to give it directly to the school.

Mr. CAREY. I think it is important that we do these things because, from my experience in dealing with the Elementary and Secondary Education Act, going back to 1960, we have had a long-standing travail of trying to find a constitutional vehicle for some forms of aid to children both in public and nonpublic schools. This does not admit to a simple solution because it is a constitutional question of grave consequence. I do think you will agree, however, having been in the Solicitor General's office yourself——

Mr. ENNIS. Yes, I was many years ago.

Mr. CAREY. When was that?

Mr. ENNIS. 1937 and 1938.

Mr. CAREY. Let us say that you had some gripping legal problems at that time.

Mr. ENNIS. I was in the Department of Justice for years, all during World War II. I handled all the evacuation of the Japanese from the West Coast, a great variety of constitutional questions.

Mr. CAREY. I respect your scholarship in that regard.

My second disappointment is that you show no sensitivity to the plight of a parent who has an acknowledged and I believe a legally constituted right to send his child to any institution meeting the standards imposed by the States. A parent has the right to enroll his child in a public, nonpublic, independent, private, or an Amish Community School, whatever it may be.

I hope you would agree that this right is clearly identified in the Constitution.

Mr. ENNIS. Yes, sir. My own parents exercised it and sent me to the Benedictine Fathers at an expense. They were not wealthy people. I have a great deal of sympathy with it. I am unable to have constitutional sympathy.

Mr. CAREY. The Constitution is not a cold-blodded document. The Constitution is a living document. With all due respect to the colloquy between you and my colleague, let us agree on the point that the Constitution does not mention the word "education" in the first amendment, or in any other section. Is there any wording in the Constitution which specifically mentions the word "education"?

Mr. Ennis. That is correct, Mr. Carey.

Mr. Carey. So it is in the body of interpretative law built up by court decisions since the first cases were brought up in the court on questions of establishment of freedom of religion. We have to say there is no clearcut deficition which will aid us totally in the resolution of this question, even if we examine the Madison, Patrick Henry or Jefferson debates at that time.

I think you will agree that the only schools in existence at that time were the so-called church related or confessional schools. There were not any public schools. Isn't that correct?

Mr. Ennis. Unless there were a few obscure exceptions. I think basically that is true, Mr. Carey, yes.

Mr. Carey. So there could not have been in the minds of the drafters of the first amendment, any attempt on a public policy or constitutional basis to give us a legal bedrock foundation which would aid us in the resolution of today's question.

Mr. Ennis. This is the difficulty question.

Mr. Carey. This is the perplexing question.

Mr. Ennis. Whether the religious character of the schools is the important factor rather than the education.

Mr. Carey. As to the body of law which the courts have given us, is it not true that where the courts have found the existence of a clear-cut constitutional right, be it a right to employment, a right to housing, or a right to public accommodation, the courts have labored most earnestly to make sure there is no substantial burden placed upon that right?

I have in mind the ***Scherbert*** v. ***Verner*** case in which the individual involved was deprived of certain unemployment compensation benefits because the job offered would have required employment during a day of the week she set aside for her religious observance.

The court stated that since she had a right to compensation there could not be a burden placed on that right.

Mr. Ennis. That is right.

Mr. Carey. Can you tell me if you have a clear-cut right to send your child to a school of your choice, any school that meets the standards imposed by the State for compulsory education, and any school which complies with the current provisions of the Civil Rights Act regarding nondiscrimination? What happens if you have that right and lack the means to exdrcise the right? Does the right extinguish?

Mr. Ennis. I would say very simply that the right does not include the right to have the Government financially support your choice, your absolute right to send your child to a religious school.

Mr. Carey. So for all intents and purposes, if you have not the means to exercise your right, the right is a nullity.

Mr. Ennis. It may be, yes. That is true, Mr. Carey.

Mr. Carey. That is an important point because I don't believe, from my view of the Constitution, that a right can be extinguished in this country for lack of economic means. If we believe that we would not pass the housing bill. We would say:

> You have the right to housing but we are not going to support your right to have it because you have to find the means yourself.
>
> You have a right to public transportation but since it is going to cost money, you have to go out and find some money yourself to board the bus. You have a right to a subsidy for job training but since it costs money we therefore are not going to support the right.

If that was the philosophy of this country, I could agree with you. But it seems to me we labor very strenuously when we identify a right to make sure that some form of economic support for that right is available.

Mr. **Ennis**. I agree that government ought to support constitutional rights unless a specific provision of the Constitution forbids it. We feel that the first words of the first amendment in this case forbid what might otherwise be desirable public policy.

Mr. **Carey**. I can appreciate that. I have worked most earnestly in the past to make sure that we do not do anything to offend the ironclad principle of separation of church and state. I defend this principle as strongly as you do.

I had something to do with the drafting of the textbook loan provision of ESEA. It was primarily my act that was included in the compendium of laws. An identically worded statute was subsequently passed in New York under the leadership of the late Senator William Farrell and then upheld in the U.S. Supreme Court in the *Allen* case. On which side was the American Civil Liberties Union in that case?

Mr. **Ennis**. We opposed the textbook law.

Mr. **Carey**. You were wrong.

Mr. **Ennis**. We were on the losing side on that constitutional question.

Mr. **Carey**. Let's hope that you and I can look forward to another adventure in the Supreme Court when again we have another contest on a bill of this kind. I hope we will have the same result.

Mr. **Ennis**. Well, we will see.

Mr. **Carey**. Thank you, Mr. Chairman.

Mr. **Burke**. Are there further questions?

I would just like to ask you, Mr. Ennis, outside of the constitutional questions I think the big problem that this committee is faced with, and which faces the Nation, is the closing down of these private schools. There are over 5 million in private schools throughout the Nation. They are closing at the rate of almost one a day. If they all close down just how are we going to handle the situation?

Mr. **Ennis**. Well, the religious and private schools have no obligation to continue and we will handle them in the public schools.

For example, the New York State Commission, so-called Fleischmann Commission, has projected that by 1980 55 percent of the Catholic elementary schools will have closed and their pupils will be shifted to the public school system. They will be in the public school system and the taxpayers will pay for it.

Mr. **Burke**. What taxpayers?

Mr. **Ennis**. I pay real estate taxes in New York City. I will pay for it in that capacity. I pay a city income tax. I will pay for it in that capacity. I pay a State income tax. I will pay it in that capacity. I pay a Federal income tax. Various funds will be used to support the increased enrollment in the public schools if the present projection of a restriction of private schools continues.

For example, I was taught 8 years by Sisters of Charity, who received maybe $20 a month. It is now projected by 1980 you will have very few nuns teaching elementary Catholic schools. You will have lay teachers who will be in the teachers unions and demanding the same compensation as public school teachers. These authorities say that this restriction of religious schools is not going to be aided by any $200 that Congress might give to parents. It is going to happen anyhow.

Mr. **Burke**. In other words, the answer of your organization is to just dump all these problems onto the taxpayer. He will pick it up. You have no other recommendation to make to solve this problem?

Mr. **Ennis**. That is correct. We think that the only course constitutionally available to the Congress is to take care of the children in the public school system if the parents are not able to support their children in the religious schools.

Mr. **Burke**. I picked up the newspapers from Boston yesterday. Our tax rate in the city of Boston is up to $196 a thousand. Property taxes are the ones that support the schools. Now we have about 40,000 to 42,000 children in the city of Boston who attend private schools. If those schools were to close during the next 2 years, which is a probability, it would cost an average of at least a thousand dollars a student. How do you think the taxpayers and property owners in the city of Boston can meet that problem?

Mr. **Ennis**. I think that the real estate tax is an improper base for it. I think the State of Massachusetts will have to meet it out of other revenues. That is how I personally feel about it.

Mr. **Burke**. They are withholding $52 million from the public schools of Boston because of the imbalance law up there. I have been informed by one of the officials of the school department in the city of Boston that all the public schools in Boston might close down in November because they have no money. I think that you and your organization have to come in here with some recommendations besides quoting your opinion on the Constitution which many people disagree with, and tell us how we are going to meet this chaotic situation which is right with us today and is facing us throughout the entire Nation.

Mr. **Ennis**. The only answer we can make, Mr. Chairman, is that the Constitution forbids one way of meeting it, giving public funds to religious schools.

Mr. **Burke**. That is your opinion. There are opinions of the other people equally as competent as you that the legislation before this committee is constitutional.

Mr. **Ennis**. If the committee concludes that we will have to resolve it in the courts.

Mr. **Burke**. You have been proven wrong once, so you might be wrong again.

Mr. **Ennis**. Yes. On constitutional matters we have been proven wrong many more times than once.

Mr. **Burke**. I wish an organization such as yours would come in with some recommendations instead of presenting these simplistic answers that doesn't meet with the nitty-gritty of the problem. The public schools in Boston are facing a closing down in November of this year because of lack of funds, and you are saying that we can

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absorb all these 40,000 to 42,000 children in private schools if they are to close in the next 1 or 2 years when they can't pay the bills for the public schools that are there now. I don't want to become quarrelsome with you——

Mr. **Ennis.** I understand.

Mr. **Burke.** I am a little bit tired of reading the papers about these brilliant attorneys who come around with their opinions on the Constitution but never come in with a recommendation of how to solve the problem.

Mr. **Ennis.** Mr. Chairman, I am certainly wholly sympathetic with the seriousness of the problems of the public and private elementary and secondary school systems. It is part of the whole increasing cost of education. But you must understand that whatever the final solution is that we have to pay a price for the separation between church and state. The price we pay for keeping this issue free from lobbying for public funds for a religious organization, the price we pay for that is that students may have to be taken into public schools. This is not a pleasant solution but we feel eventually it is the only solution.

Mr. **Burke.** Thank you for your tea and sympathy.

Are there further questions?

Mr. **Byrnes.** Mr. Ennis, since you directed most of your attention to the constitutional aspect, how do you rationalize your conclusion that a tax credit is unconstitutional in any form, in light of what I think is a general recognition that a contribution which is directly church related is permitted to be deductible under our tax code.

Mr. **Ennis.** What contribution?

Mr. **Byrnes.** Contributions to churches. We permit them to be deductible.

Mr. **Ennis.** Our charitable contributions.

Mr. **Byrnes.** They are not charitable, they are church related, educational, religious. I am trying to find some reason as to why that is constitutional and the tax credit is not.

Where is the distinction? In the bill that I propose, for example, you don't give a 100-percent tax credit. You use the tax credit only to avoid the deduction method which does give a preference, and a high preference, to high-income taxpayers. Regardless of that factor, we have to recognize, I think, that a deduction has been found appropriate where it is purely a religious contribution, and yet you say you can't have anything in the form of tax credit.

Have you addressed yourself in your thinking to that problem?

Mr. **Ennis.** Mr. Byrnes, it is not a wholly satisfactory answer but all I can tell you is that in *Walz* and *Kurtzman* the Court wrestled with that problem. I argued before the Supreme Court that to exempt religious institutions from a billion dollars a year of taxes was exactly the same as taxing church property and directing tax authorities when they got the money to give it back if it was from a religious institution. The Supreme Court said no, that there is a distinction between not collecting money, leaving religious institutions alone and not collecting tax money from them, there is a distinction between that and dipping into the treasury and giving it back.

Under *Waltz* and *Kurtzman* the exemption from taxation is OK, but giving tax money to religious schools even for purely secular studies is unconstitutional.

Now, an organization like mine considers the tax credit as giving money rather than simply giving a traditional exemption to religious organizations.

Mr. **Byrnes**. When you eliminate though from the——

Mr. **Ennis**. You put the right question, it is by no means easy to put it on one side or the other.

Mr. **Byrnes**. I think there is more of a constitutional question raised when you are going to give a refund, as is proposed in the Carey bill, to those who have paid a tuition but who owe taxes—if you are going to refund, it could be a 100-percent refund—than a situation which involves a tax credit which then gets you more in the neighborhood of a——

Mr. **Ennis**. Deduction.

Mr. **Byrnes** (continuing). In a different form. Today we have, and have had for years, the recognition of the deductibility of contributions made exclusively for religious purposes.

Mr. **Ennis**. You are absolutely correct.

Mr. **Byrnes**. If we can do that, then why can't we do it in the form of a tax credit, rather than a deduction, because fundamentally you can have with a tax credit the same effect as with a deduction except that it does not have the graduation factor cranked in. That is why some of us believe it is more appropriate to direct it in terms of a tax credit than in terms of a deduction, so that we don't crank in this progressivity which is a bigger benefit to a person with a higher income tax rate.

Mr. **Ennis**. By this fairness you increase the constitutional risk.

Mr. **Byrnes**. That is what I am asking you; why?

Mr. **Ennis**. My position would be that you would increase the constitutional risk. I know very well that if such legislation passed the argument would be made to the Supreme Court of the United States that this falls under *Kurtzman*, nearer *Kurtzman* than it is to *Walz*, and is in effect giving tax funds to the religious schools. That is the issue.

Mr. **Byrnes**. Your rationalization is only that it can be argued that there is a distinction.

Mr. **Ennis**. That is right.

Mr. **Byrnes**. That is all, Mr. Chairman.

Mr. **Burke**. Are there further questions?

Mr. **Gibbons**. May I ask a question?

Has the constitutionality of religious deductions ever been tested in the U.S. Supreme Court?

Mr. **Ennis**. No. But we did test the exemption of religious properties from taxation.

Mr. **Gibbons**. But the question of whether or not that provision in the U.S. Internal Revenue Code as to whether or not a deduction for religious contributions is an aid to the establishment of religion and in violation of the first amendment has not been decided.

Mr. **Ennis**. That is correct.

Mr. **Gibbons**. Has anybody ever attempted to take one of those cases to the Supreme Court?

Mr. **Ennis**. So far as I know, no. I will check that. If I find anything I will send you a note on it.

Mr. Gibbons. So the questions that Mr. Byrnes raised about comparing tax credits with charitable deductions is one that has never gotten to the Supreme Court so far as we know right now.

Mr. Ennis. That is right. Mr. Byrnes is resting on the point that if it has been accepted all this time, that perhaps it will continue to enjoy that protection.

Mr. Gibbons. May I ask another question: How would you ever get a question like that to the Supreme Court? Have you some inhibiting problems in case law?

Mr. Ennis. It would be difficult. You know, we have cases going back to *Frothingham* v. *Mellon* which indicate that an individual taxpayer does not have a sufficient standing to raise a question involving the constitutionality of a tax law. It is a tricky problem. I think in support of the general position you are making, it is perhaps one reason that this constitutional deductions of religious contributions has not been decided because it could not be raised.

Mr. Gibbons. The person who took the deduction was not going to raise the question and the church was not going to raise the question.

Mr. Ennis. I might, as a taxpayer, file a complaint, and I could say in it simply that the Internal Revenue Service has supplied me with information as to what the deductions for religious contributions are and I calculate that my income tax has been raised by $10 by that and I object to making in effect a $10 contribution to religious purposes.

The Federal courts so far have indicated that that is too insubstantial an interest for me to be able to get that constitutional question decided.

Mr. Gibbons. I don't know whether the court has ever done this but I know often the court puts off deciding constitutional questions on all kinds of procedural grounds. That seems to be what they have done in this case.

Mr. Ennis. The court said that it is constitutionally obligated to avoid constitutional questions if it can. It certainly does not like to conflict with the determination of the Congress exercising its constitutional authority. If you pass this, you recommend this and the Congress passes it, impliedly there is a determination that it is constitutional. The Supreme Court would rather not deal with it unless it has to.

Mr. Gibbons. Thank you.

Mr. Byrnes. Let me add this: I do believe there is some dicta in the *Walz* case that does say, although I emphasize it is dicta, that the deductible aspect is not challengeable as unconstitutional.

I suggest that you might check against the dicta as it related to the constitutionality of deductions.

Mr. Ennis. It may be. In these cases, as I say, the court has indulged in six or seven hundred pages of opinion since *Everson*. I don't remember whether there was dicta in the *Walz*, but I would not be surprised to find such dicta.

Mr. Burke. Are there further questions?

Thank you very much, Mr. Ennis, for coming before us. We appreciate your appearance.

Mr. Ennis. Thank you, Mr. Chairman. I am sorry I have not been able to contribute any solution to the Boston school problem which I appreciate is a most serious and troublesome one.

Mr. BURKE. If you have any ideas, you come up to Boston. They would like to hear them.

Mr. ENNIS. Thank you.

Mr. BURKE. Our next witness is August Steinhilber, director of Federal and congressional relations, National School Boards Association.

You may identify yourself for the committee and proceed.

STATEMENT OF AUGUST W. STEINHILBER, DIRECTOR, FEDERAL AND CONGRESSIONAL RELATIONS, NATIONAL SCHOOL BOARDS ASSOCIATION

Mr. STEINHILBER. Mr. Chairman, I appreciate appearing before this Committee only for the second time, although I do have some friends here, having appeared before the House Committee on Education and Labor many times, Mr. Gibbons having quite a bit to do with title I formula and some floor battles I do recall, and Mr. Carey especially with legislation dealing with handicapped children.

The National School Boards Association is the only major education organization representing school board members—who are in some areas called school trustees. This is, of course, true in Massachusetts. Throughout the Nation, approximately 84,000 of these individuals are association members. These people, in turn, are responsible for the education of more than 95 percent of all the Nation's public school children.

Currently marking its 32d year of service, NSBA is a federation of State school boards associations, with direct local school board affiliates, constituted to strengthen local lay control of education and to work for the improvement of education. Most of these school board members, like yourselves, are elected public officials. Accordingly, they are politically accountable to their constituents for both educational policy and fiscal management. As lay unsalaried individuals, school board members are in a rather unique position of being able to judge legislative programs, such as Federal General Aid to Education, purely from the standpoint of public education, without consideration to their personal professional interest.

Association policy is determined at the NSBA annual convention at which representatives from every geographic region of the Nation translate policies and resolutions into ongoing programs.

At its annual convention this past spring, NSBA again reaffirmed its support for Federal General Aid Legislation by adopting the following resolution:

> The National School Boards Association urges that Congress and the President immediately establish a program of federal support for public education which:
>
> A. expresses the national concern that each child be provided an equal opportunity for good public education;
>
> B. compensates for disparities in the need, effort expended, and resources of the states and territories of the United States and subdivisions thereof and the District of Columbia;
>
> C. provides within four years, a level of expenditure for operational purposes of not less than 40 per cent of the total cost of public education;
>
> D. ensures maintenance of state and local policy determination and effort; and
>
> E. allocates aid directly to public education.

Mr. Chairman, in June of 1971 when we last appeared before you to encourage aid to education in pending General Revenue Sharing legislation, we gave rather lengthy treatment to the economic condition of our school systems.

Mr. Chairman, in light of that record, which still stands, and the responsiveness of this committee thereto, as evidenced by the legislation before us today, we do not believe it to be necessary to review for this committee the case for Federal general assistance to our Nation's schools, either from an educational or a fiscal standpoint. Hence, with your permission, I would rather turn our focus upon the operative features of H.R. 16141.

Specifically, our statement will analyze the public school features of the Public and Private Education Assistance Act of 1972, and compare it to H.R. 16202, a related bill pending in the House Committee on Education and Labor. Due to the complexity of the legislation, our remarks will be limited to the points of major concern to local school boards, rather than a treatment of all the issues. In this connection, we will address sections of the bill which (1) match State allotments to State equalization expenditures; (2) require intrastate equalization as a condition of eligibility; (3) delegate certain powers and administrative responsibilities to the Secretary of HEW; and (4) require certain assurances by the States as a condition of eligibility.

With your permission, Mr. Chairman, we invite your attention to the State allotment formula contained in H.R. 16141.

I. STATE ALLOTMENT

A. H.R. 16141

Section 103 of H.R. 16141 provides for the allotment of $2.25 billion among the States in amounts matching each State's expenditure for the fiscal equalization of educational opportunities among its localities, as defined by formula under section 102. In the event there are insufficient Federal funds to match these State expenditures, each State's share would be reduced proportionately. At the same time, payments to any one State could not exceed 10 percent of total nonfederal education expenditures within that State. NSBA concurs that the achievement of equal educational opportunity is a sound purpose to be included in a bill of this kind. However, we question the use of intrastate equalization expenditures as a determinant, particularly as the sole determinant, of each State's allotment.

The specific problem raised by this formula is that States requiring relatively high dollar amounts to equalize interdistrict disparities would be eligible to receive more assistance than States with relatively similar but more evenly distributed per pupil wealth.

What I am trying to show is that there are other ways to resolve disparity problems. For example, this legislation could discourage States from seeking other solutions, such as school district consolidation. I would also imagine the formula, if taken out to its conclusion, would show that there may be some discrepancies in the South where there are large school districts on a county-size basis as compared with the Midwest where school districts are smaller.

So, basically this legislation would foreclose States, or I should say be a deterrent to States looking for alternate ways of resolving school finances. Equalization, using State aid, would be the only option, at least as I understand the formula.

It may be argued that the aforementioned 10-percent limitation would prevent gross inequities from occurring. However, as we will discuss in greater detail later on in our statement, that limitation is less than what NSBA envisions as the ideal Federal contribution to education. So that from the school-board standpoint, let me for the moment just summarily say that any elimination of formula inequities through this limitation will not assist in eliminating broader inequities among the States or other problems of school finance within the States.

I would hasten to add that NSBA would be favorably disposed to the inclusion of an intrastate equalization factor as a criteria for eligibility or even as the basis for an incentive grant to cover the cost of revising a State's system of school finance.

In searching for a more desirable formula, we would suggest conditioning the amount of each State's allotment to its relative effort, special educational needs, student population, fiscal resources, as well as the discussed requirement or incentive for intrastate equalization.

In this connection, it should be noted that the provisions of section 102(c) which permit the Secretary to prescribe by regulation other State equalization programs will not adequately provide for the above-listed elements as they exist on a State-to-State basis. The reason is that, just as in the case of the basic matching allotment, these "other equalization programs" would be pegged to a comparision of each State's needs to equalize local variations rather than a comparison of statewide needs.

Therefore, the bill requires additional language to provide that each State's relative needs should be taken into account in making State allotments. In this regard, for the reasons discussed in that portion of our statement concerning the Secretary's powers, we believe the precise factors to be taken into account should be set forth in the statutory language rather than delegated to the executive branch.

At this point, Mr. Chairman, I would like to turn to the State allotment formula of H.R. 16202.

B. H.R. 16202

Section 103 of H.R. 16202 would apportion funds among the States on the basis of student population rather than on expenditures for intrastate equalization. More precisely, two-thirds of the funds would be apportioned in proportion to the number of the Nation's schoolchildren residing in each State. The remaining one-third would be apportioned in a similar manner on the basis of enrollments of children from low-income families. In any case, a State's total payment cannot exceed 30 percent of nonfederal funds spent within the State.

Although these student enrollment comparisons are relevant factors for making State allotments, they may not go far enough. Indeed, as a flat grant, the formula is analagous to those State aid formulas that are being challenged before the U.S. Supreme Court in the *Rodriquez* case.

Regardless of how that Court rules, NSBA urges an expansion of this formula in order to equalize, to some extent, the per pupil fiscal variations between the States. For example, while it may not be feasible to compare the accumulated wealth of the States, perhaps an adjustment inversely related to personal income tax collections would help in this regard. (See Partnership in Education Act, H.R. 6179, introduced by Mr. Pucinski in 1971.)

Similarly, it may be advisable to include a factor which would adjust allotments for the education effort of each State in relationship to its total income.

C. Conclusions on State allotment

As just notes, NSBA would be most supportive of a State allotment formula which makes payments on the basis of student enrollments, provided there are reasonable adjustments for State income, effort, the incidence of special educational needs, and economic costs; for example, municipal overburden.

At the same time the States should be encouraged to provide for intrastate equalization in much the same way. In this latter connection, although we are not prepared to say that the States should be made to adopt the precise equalization formula set forth by both H.R. 16141 and H.R. 16202, we would support a requirement for the adoption of an adequate State-devised equalization formula, particularly if a separate grant were made to assist the States in developing and converting to such a formula from what previously existed.

Neither bill contains a State maintenance of effort factor. Although heavily tax-burdened States could make a case for indirectly using the Federal grant to substitute for their own effort, NSBA believes that a substantial portion of these funds should be used for additional educational services.

As previously noted, H.R. 16141 limits each State's payment to 10 percent of its non-Federal education payment, whereas H.R. 16202 establishes a similar 30 percent limitation. Because the former bill pegs payments to State equalization payments, it can be argued that for the H.R. 16141 State apportionment scheme such a low ceiling is needed to prohibit the previously mentioned inequities arising from the State equalization formula. However, we do not believe that in the long run a 10-percent funding level will be desirable.

Given the demand for improved education, rising costs, discontent with the local property tax, and the unwillingness of local communities to relinquish their control over education—which would occur if there were a full or near full State assumption of education costs—a more desirable Federal assumption level would be, on the average, I mean a national average—not for each State—about one-third of total education costs.

As to the H.R. 16202 formula, a percentage limitation would not be needed since the problem of preventing inequitable allotments would not exist. In fact, any such limitation on each State can inhibit full interstate equalization. That is, under this limitation, once the level of funding is such that the neediest State, currently defined by student enrollment, reaches the 30 percent limit, most additional funding would then go to the less needy States.

Hence, regardless of whether any special factors are built into the formula, as the funding for the program increases, there would be a "leveling up" whereby Federal grants would be based solely on expenditures. In other words, the relatively wealthier States would tend to do better than poorer States with similar student populations. That is under that other bill formula.

It should be noted that at an authorized level of $10 billion, this result would occur immediately. Hence, while NSBA would prefer the 30 percent limitation to the 10 percent limitation, we would urge the committee to reconsider the purpose of the limitation, especially if the current H.R. 16141, state equalization formula is not used as the sole basis for State allotments. If in doing so there are found to be exceptionally skewed distributions in a few very poor or wealthy States, rather than turning to a percentage limitation, perhaps another means can be found to cure those few problem cases.

Having stated our major concerns with the State allotment formula of the two bills, I would like to offer a few comments regarding the intrastate equalization requirements of the bills before the committee.

II. INTRASTATE EQUALIZATION UNDER H.R. 16141 AND H.R. 16202

For the most part, both bills treat intrastate equalization similarly. As a starting off point each bill conditions a State's eligibility for an allotment to its adoption of a State equalization formula. Specifically, the State must pay each local district the amount by which its total pupil expenditures, computed at the State average per pupil rate, exceeds the dollar amount of that portion of the State's assessed real property valuation located within the district multiplied by the State's total education expenses.

Hence, if a district has relatively more pupils to educate relative to its portion of the State's total property valuation than does the average school district, then the State must bring that district to the level of the average. It is perhaps more simply stated in the obverse.

If a district has less assessed property behind the State average educational cost of its student enrollment than the average district, the State must bring that district to the level of the average. Although this approach would be a significantly progressive step toward intrastate equalization, its failure to deal with several important factors makes it less perfect than it could be.

First, it does not equalize for the uneven geographical occurrence of high-cost educational programs. That is, since the basis for aid would be pegged to the State's average per pupil expenditure, a district with a relatively large number of culturally disadvantaged, handicapped, and/or vocational education students would not have that factor taken into consideration. In some States this problem would be resolved through categorical aid programs, assuming that would not be contrary to the standards of eligibility of the bills. But for those States not providing reasonable levels of State categorical aid, it may be advisable to resolve this problem by weighting the counting of children enrolled in special education programs.

The national educational finance project suggests a weighting along the following lines:

Educational program:	*Weight assigned*
Basic elementary grades 1–6	1.00
Grades 7–9	1.20
Grades 10–12	1.40
Kindergarten	1.30
Mentally handicapped	1.90
Physically handicapped	3.25
Special learning disorder	2.40
Compensatory education	2.00
Vocational-technical	1.80

As a corollary issue, a question is also raised whether there should be a factor for municipal overburden in the formula. For the most part, the areas with the highest concentrations of special education children are also those with the highest costs for welfare, health, police, and other public services. Hence, even with State aid, a municipality can still be squeezed by a higher than average education program as well as higher costs for its other services. Perhaps pending general revenue-sharing legislation can alleviate this problem, but if it does not, some weighting may be included for this factor.

It also should be noted that neither bill has a local maintenance of effort provision. The intrastate equalization formula is based upon assessed property valuation and average expenditures, not on that portion of property tax revenue which each district actually raises for education. Hence, a district entitled to State aid could lower its school property tax rates rather than use the money to expand its education services.

Similarly, if a district does not have independent taxing authority, the local government could then draw from school tax revenues for use in other areas. Certainly, districts oppressed by high property taxes or high school taxes should be entitled to take advantage of a break. However, at the same time, it is questionable whether they should be permitted to reduce their effort under the State average.

Finally as an observation, rather than as a criticism, we note that the formula may not result in immediate equalization of opportunity. The State aid formula only brings poorer districts up to the average. Unless the State aid fund were being subsidized by the property taxes of wealthier districts—which would be unlikely—those districts would continue to be in a better position.

However, since the average expenditure would rise from year to year with the infusion of new State aid funds to uplift the poorer districts to the average, this disparity would tend to diminish over a period of years. Although equalization may not be immediate, NSBA believes that from a practical and political standpoint, the bill is aided by giving the States the option to determine whether, and to what extent, they should draw from "property rich" districts. If there should be an accelerated timetable, that would perhaps best be decided by the Supreme Court in litigation now pending before it.

As previously suggested, an argument would be raised that these factors, both on the interstate and intrastate level, could be provided for through the regulation-making powers delegated to the Secretary. However, we believe that a closer examination of that means compels that those factors be set forth in the legislation instead.

III. POWER OF THE SECRETARY

Since under H.R. 16141 each State's share of the trust fund is determined by the amount of its equalization payment, then those other factors which the Secretary may prescribe as a part of equalization could have a material bearing on the share of any State or group of States. Given the magnitude of this bill, NSBA does not believe that any partisan administration should be so empowered. But money aside, NSBA believes that philosophically it should be the Congress, not the administration, who determines the basic policy for spending

Federal funds. In this connection there have been cases wherein administrations have attempted to operate programs different than those intended by legislation.

We believe that this administrative delegation is far too general to prevent that result in this program. Indeed, under 102(b)(2)(d) theoretically the Secretary could, as a condition for receiving funds, require the States to operate any program which he deems relevant to equalizing educational opportunities. Presumably this would give the Secretary a hand in influencing local education programs, in addition to the freedom to design State fiscal programs. NSBA believes that this is far too much power to reside at the Federal level, particularly in the executive branch.

Hence, we urge the committee to consider the addition of precise legislative language setting forth those factors which should be included in both the formula for determining State allotment and the intrastate equalization formula for determining eligibility.

I depart at this time because we have had a number of occasions to testify before congressional committees on this particular problem.

Quite frankly, we trust Congress in its ability to set forth a program and develop a formula. I am not attacking any one administration, but all administrations, they are susceptible to behind-the-scenes political chicanery.

We would much prefer having the exact amount of Federal grants known in advance.

I might make a second point along that line. School board members, like yourselves, are politically accountable to their own constituency. They have budgets which they develop. They would like to see well in advance of the school year how much Federal funds are going to be developed out of the Federal legislation.

If we are left on the tender hooks of the administration determining the criteria to be used of how much a school district can and should receive, we then find ourselves in the awkward position of starting a school year and developing a program not knowing exactly how much money we are going to get or when.

I might add that we have also found that the Elementary and Secondary Education Act has been a legal education for us because we have found that the power of the Secretary to impound funds is tremendously limited because under the formula as set up he has only ministerial duties and does not have discretion over the amounts of money. It is one way which we have been able to operate those programs in a more effective way.

IV. SECRETARY'S PROGRAM

Section 107(a) of both bills provide that the general aid program is to be carried out by the Secretary of HEW, and not his delegate. Pursuant to the recent enactment of Public Law 92-318, most education programs will be operated by the Assistant Secretary of HEW for Education. We support program management at that level rather than at the Secretary's level for two reasons.

First, it is administratively easier and less costly for local school boards to establish liaison with one office than to develop multiple communications, applications, and reports for the additional offices which would be involved if the Secretary managed a program of this kind.

Second, NSBA has been urging for several years now the recognition of a higher Federal priority for education through the establishment of a Department of Education. If this program resided in the Secretary's office, the reverse would result since education's biggest program then would be diffused under the general umbrella of HEW.

I might add that the Secretary of HEW on several occasions has delegated educational programs to other than the Office of Education, the Office of Education which would now be the Assistant Secretary of HEW for Education. So we would rather have that set down specifically in the bill, itself.

V. EQUALIZATION OF SALARIES

Section 105(a)(6) of both bills provide that the State must assure that "persons employed in jobs financed in whole or in part out of its trust fund * * * will be paid wages which shall not be lower than the prevailing rates of pay for persons employed in similar jobs by such State." Given its broadest interpretation, this section could require a standard State salary schedule for teachers, superintendents, administrative personnel, et cetera.

We believe the question of teacher salaries should be a matter of local negotiation through the bargaining process. Apart from wide variances in the standard of living throughout many States, individual districts in evaluating their total education service should be left with the freedom to decide how much emphasis it wishes to place on the instructor.

Furthermore, we believe that if school boards lose the power of the purse, their effectiveness in discharging their responsibility over personnel—and education policy involving personnel—will be greatly weakened. As to superintendents and other administrators, the size of their responsibilities vary so widely depending upon the size, finances, and dozens of other school district factors, that it would be inequitable to standardize their wages.

TITLE II

Our foregoing comments regarding H.R. 16141 have been limited to aid to public schools, i.e., title I of the bill. At this point I would like to turn to title II, which provides individual tax credits up to $200 of tuition paid for children enrolled in nonpublic schools.

The position of the National School Boards Association is clear on this issue. We filed a brief amicus curiae in support of the plaintiff in *Lemon* v. *Kurtzman*. We are involved in a followup case in Pennsylvania of *Lemon* v. *Sloan*. Our association has long championed the cause of public education in that while school districts have an obligation to all children, such an obligation does not run to the assistance of nonpublic schools themselves. The receipt of public funds directly or indirectly includes the concept of being accountable to the public at large, school board members as public officials are accountable. However, officials from private nonprofit schools are basically accountable to the students, parents and/or parishioners.

The following resolution was passed at our 1972 convention:

PUBLIC SUPPORT OF EDUCATION

The National School Boards Association urges that all citizens, especially school board members, should:

A. support equitable tax reform, and, if necessary, tax increases;

B. oppose the use of public revenues for financing non-public elementary and secondary schools;

C. oppose the use of the voucher system as a method of school financing; and

D. oppose tax credits for expenditures for tuition or living expenses at any elementary and/or secondary educational institution.

RECENT DEVELOPMENTS

Today we are disturbed by the general attitude expressed by the administration, and Members of Congress, with respect to school finance. The Federal Government provides but 7 percent of the funding for public elementary and secondary education. Nearly all of this funding is for categorical programs, meaning aid for specific programs which are of a special Federal interest. Such categorical programs usually have long, involved application forms, regulations, guidelines and procedures, and therefore tie the hands of locally elected public officials whose responsibility it is to fashion educational programs to meet community needs.

Truly the first real conceptual breakthrough in terms of Federal assistance with a minimum of Federal control occurred in this committee through general revenue sharing.

Unfortunately, most school districts which are fiscally and politically independent of the general purpose governments in which they are located have been excluded from the House version of that bill and only minimally included in the Senate version. Hopefully the legislation now before this committee, when perfected, will correct this situation.

However, we are upset with the administration's position on this bill. Secretary of HEW Richardson, in his appearance before this committee, expressed interest in a continued study of the school finance problem.

While schools are closing, property tax rates have become confiscatory, and so forth, the administration wants still another study, after spending the last 2 years with the famous President's Commission on School Finance, headed by Neal McElroy.

The background papers of that Commission, which fill a shelf of bookcase space in my personal library, are ample evidence that the data is available. Caspar Weinberger, Director of the Office of Management and Budget, goes one step further. He opposed title I of the bill and would ask that aid to public schools be reduced. He supports the tax-credit concept and goes one step further by saying current aid to public schools be reduced in an amount equal to the tax-credit proposal.

We wonder whether this is but a grandstand play in anticipation of the November elections.

Mr. CAREY. Mr. Chairman, may I interrupt at this point?

You are reading something which I do not have in my copy of the statement. This is very significant testimony you are making. I am particularly anxious that what you are saying is available to the press as well as to members of the committee. Some of the statements you are making are very pertinent.

Is this in addition to your statement?

Mr. STEINHILBER. This was developed over this past weekend after going through the records of the operation of this committee earlier. So that is why it is not available. But this page and a half will be available to the committee, and I will make sure that it is available.

Mr. CAREY. I hope it will be available to the public as well. It is extremely pertinent testimony. I find it to be most revealing.

Mr. STEINHILBER. Mr. Chairman, we have made our comments today in the context of supporting the committee's effort to improve our Nation's public education. In searching for a program which is both equitable and protective of community control over education, we support your bill, but suggest the following:

1. An amendment of the State allotment formula which reflects relative student enrollment, special educational needs, income and effort of the States, as well as an incentive for making equalization expenditures.
2. Specifically include these factors in the legislation, rather than as a delegation to the Secretary.
3. Include these factors as criteria for intrastate equalization programs, to be developed by the State.
4. Shift the responsibility for the program to the Assistant Secretary of HEW.
5. Exclude State assurance provisions requiring the standardization of salaries for personnel who would not ordinarily be covered by the Davis-Bacon Act

Mr. Chairman, the National School Boards Association thanks you for this opportunity to present its views on general aid to education. We stand prepared to provide you with any assistance which you may need in this endeavor.

Thank you, Mr Chairman.

Mr. ULLMAN (presiding). Thank you, Mr. Steinhilber, for a very comprehensive, thoughtful, and helpful statement.

Are there any questions?

If not——

Mr. CAREY. Mr. Chairman.

Mr. ULLMAN. Mr. Carey.

Mr CAREY Just this point. I do recognize and would certainly welcome that kind of change which would help us recognize the municipal overburden, the term used here. If we have such an authorization factor in this bill, you feel it would be helpful in providing for the special education needs in the inner cities. Is that correct?

Mr. STEINHILBER. That is quite correct.

Mr. CAREY. That is a very wholesome attitude on the part of the National School Boards Association

Another welcome point is your suggestion that the bill be more specific in setting forth regulations for the guidance of both the Secretary of the Treasury and Secretary of HEW, in implementing the bill. I think that is a worthwhile recommendation.

Where schools are concerned, we cannot give too much latitude to what you have termed as behind-the-scenes political manipulation in the use of Federal funds. This would be extremely dangerous.

Mr. **Steinhilber**. We have up to this point stayed out of it, although there was at one time an attempt to impound some of the money under title I of ESEA. However, we then received a legal memorandum from the General Counsel of HEW that administrative impounding was not possible since the distribution of title I funds was not discretionary. That is, the Secretary's position was one of ministerial value only and he was, therefore, more of a conduit to the States and localities than in the position of being free to determine how much of the funds should be spent.

This is very important to us.

Mr. **Carey**. I agree.

Finally, yours is the first statement that I have read or heard that addresses itself to the looming and massive questions that this Congress and this committee must face. That is, what are the future financial needs of our school system and what is the taxation necessary to supply those needs.

You do agree that there is a proper ground for this committee to be addressing these questions of the impact of the local property taxes and the inadequacy of State resources? You do agree that it is time we got around to this?

Mr **Steinhilber**. Mr. Carey, I would say that I have been asked the same question by another committee. Therefore, although I do not like to get into jurisdictional questions, I would say that with respect to the problems of taxation, it is indeed appealing to us that a committee having responsibilities for tax law can tie school finance tied to the Federal income tax, and thereby bypass the annual appropriations process which has resulted in three vetoes in the last 4 years.

Mr. **Carey**. I do not want to get into the political dialectics of the day. Suffice it to say that some of the points you have discussed today have been among the most heartening news I have heard on both sides.

Thank you, Mr. Chairman.

Mr. **Ullman**. Thank you very much, Mr Steinhilber.

Our next witnesses are Mr. Arent and Mr. Brody.

We are happy to have you before the committee. If you will further identify yourselves for the record, you may proceed.

STATEMENT OF ALBERT E. ARENT, CHAIRMAN, NATIONAL JEWISH COMMUNITY RELATIONS ADVISORY COUNCIL, ON BEHALF OF AMERICAN JEWISH COMMITTEE; AMERICAN JEWISH CONGRESS; B'NAI B'RITH, ANTI-DEFAMATION LEAGUE; JEWISH LABOR COMMITTEE; JEWISH WAR VETERANS OF THE U.S.A.; NATIONAL COUNCIL OF JEWISH WOMEN; UNION OF AMERICAN HEBREW CONGREGATIONS; AND UNITED SYNAGOGUE OF AMERICA; ACCOMPANIED BY DAVID BRODY, DIRECTOR, WASHINGTON OFFICE, ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH

Mr. **Arent**. Thank you, Mr. Ullman and gentlemen.

I am here in behalf of eight of the major Jewish organizations in this country which include among their membership a great proportion of the organized Jewish community of America. They are the

American Jewish Committee, American Jewish Congress, B'nai B'rith—Anti-Defamation League, Jewish Labor Committee, Jewish War Veterans of the U.S.A., National Council of Jewish Women, Union of American Hebrew Congregations, and the United Synagogue of America.

We appreciate the opportunity to submit testimony to your committee on H.R. 16141 and related bills. We believe that the outcome of this hearing may affect the nature of the American educational system and the continuation of our traditional religious freedoms for decades to come.

Mr. ULLMAN. Mr Arent, are you both going to make statements?

Mr. ARENT. No, I will make the statement. I will curtail somewhat the written text of the statement.

Mr. ULLMAN. Would you like the full text in the record?

Mr. ARENT. We would like the full text in the record, thank you.

Mr. ULLMAN. Without objection, that may be done.

You may proceed.

Mr. ARENT. The first of the two titles contained in H.R. 16141 would authorize Federal grants to the States to assist in mitigating a form of discrimination that has become increasingly severe in almost all of our States—the wide discrepancies between rich and poor school districts in the amount of money available for public school education.

Study after study has shown that districts having meager resources for real estate taxation tax themselves more and obtain less school money per child than rich districts. The result is that many children, solely because they live in tax-poor districts, are deprived of educational opportunities available to other children in the same State.

The undersigned organizations deplore and condemn these inequalities in public school financing We have called for a substantial increase in Federal funding of public education in order to assure equalization on a national basis that will provide quality education for all children

The specific proposals made in title I are plainly designed to move in the direction of Federal assistance to States attempting equalization. The undersigned therefore support the objectives of that title.

We believe, however, that we cannot at this time express support of the specific means of achieving that end embodied in title I. Consideration of this problem is just beginning. The proposals made in title I are new and have not received adequate appraisal.

In particular, we are concerned that title I, as drafted, would not necessarily end or even reduce the present disproportionate reliance on real estate taxes in financing education. We believe the subject of equalizing public school financing should be considered further. This should be done in conjunction with consideration of the steps to be taken by the various States looking toward equalization.

TITLE II—TAX CREDITS FOR PARENTS OF SECTARIAN SCHOOL PUPILS

The undersigned organizations urge rejection of title II of H.R. 16141 and of all other bills providing tax credits for parents of children attending religiously affiliated schools. We believe that the tax credit plan is a transparent device for evasion of the First Amendment and that it would have the harmful effects which that amendment was designed to prevent.

We need hardly tell this committee that, in opposing tax credits and other forms of aid to sectarian schools, we believe that we are advancing rather than retarding the cause of Jewish education. The undersigned organizations have all joined in a statement emphasizing that Jewish education is essential "to the continuance and vitality of Jewish communal life." We have concluded that, while we believe that Jewish religious institutions "should neither seek nor accept government funding of their programs," we are convinced that the "Jewish community has the resources to finance Jewish education adequately without the aid of government funds."

TERMS OF H.R. 16141, TITLE II

Title II of H.R. 16141 provides that an individual shall be allowed a credit against his income tax for tuition paid to any private nonprofit elementary or secondary school with respect to any dependent for whom he is allowed an exemption. The credit would be the amount of tuition actually paid, up to a limit of $200 for each dependent.

The bill is drafted in such a way that persons whose income tax is less than the maximum credit allowed would receive the difference in the form of a cash payment from the Government.

This, I think, is quite significant. Take, for example, the case of a parent who has three children in a nonpublic school and pays a total of $750 for their tuition. He would be entitled to a credit of $600, $200 per child. If his total tax was $450 he would pay no tax and would receive a cash payment of $150.

The bill provides that it is to apply to taxable years beginning after December 31, 1971.

H.R. 13020 and 13495, also before this committee, are tax credit bills similar in most respects to title II of H.R. 16141.

THE FIRST AMENDMENT

The first amendment provides that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise therefore.* * *"

In 1947 the U.S. Supreme Court declared, in *Everson* v. *Board of Education*, 330 U.S. 1, 16, that this means, inter alia, that

> No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion.

This interpretation of the first amendment has been repeatedly reaffirmed. *Illinois ex rel. McCollum* v. *Board of Education*, 333 U.S. 203, 210–211 (1948); *McGowan* v. *Maryland*, 366 U.S. 420, 443 (1961); *Torcaso* v. *Watkins*, 367 U.S. 488, 492–493 (1961); *Abington School District* v. *Schempp*, 374 U.S. 203, 216–217 (1963); *Board of Education* v. *Allen*, 392 U.S. 236, 242 (1968).

In the *Schempp* case, the Supreme Court made it clear that the first amendment prohibits Government action which has the "primary effect" of advancing or inhibiting religion (374 U.S. at 222). Again, in *Walz* v. *Tax Commission of the City of New York*, 397 U.S. 664, 668 (1970), the court said:

> It is sufficient to note that for the men who wrote the Religion Clauses of the First Amendment the 'establishment' of a religion connoted sponsorship, financial support, and active involvement of the sovereign in religious activity.

It must be remembered, in this connection, that the primary purpose of religious schools, their very reason for existence whether Christian or Jewish, is to perpetuate their faith. Under our Constitution all religious bodies have the right to conduct schools for that purpose—but not at the expense of the public.

The tax credit arrangement is quite obviously a form of financial support by the sovereign of religious activity in the words of the *Walz* case.

Just as plainly, it has the primary effect of advancing religion, in the words of the *Schempp* case.

Indeed, the arrangement is frankly offered as a form of financial support. Thus, Representative Carey, in the explanation of H.R. 16141 which has been distributed by this committee, says that the two titles of the bill are concerned with the "financial problems of both public and private schools" and that "many private schools are experiencing increasing operating costs." Title II is plainly devised to supply the "financial supports" of the Federal Government to those schools in meeting those costs.

The whole purpose of title II is to draw on the financial resources of the Federal Government to facilitate the continued operations of nonpublic schools, most of which are sectarian. No other interpretation can be put on its terms.

TUITION VOUCHERS

Few would doubt that it would be a plain violation of the Constitution for the U.S. Government simply to turn over to sectarian schools $200 out of the Federal Treasury for each child in attendance. Yet it is elementary law that what the Constitution forbids may not be achieved ingenuously or ingeniously.

It is for that reason that the courts have uniformly condemned statutes embodying payments of tax-raised funds to sectarian schools indirectly through the parents of the pupils attending.

Schemes embodying such indirect payments have borne various names, such as "tuition grants," "tuition reimbursement," and "tuition vouchers."

None of them has withstood judicial scrutiny—*Almond* v. *Day*, 197 Va. 419, 89 S.E. 2d 851 (1955); *Swart* v. *South Burlington School District*, 122 Vt. 177, 167 Atl. 2d 514, cert. den., 366 U.S. 925 (1961); *Opinion of the Justices*, 259 N.E. 2d 564 (1970), Mass. Sup. Jud. Ct.; *Hartness* v. *Patterson*, 179 S.E. 2d 907 (S.C. 1971); *Lemon* v. *Sloan*, E.D. Penn., decided April 6, 1972; *Wolman* v. *Essex*, S.D. Ohio, decided April 17, 1972

In *Lemon* v. *Sloan*, a unanimous three-judge district court said:

> * * * we do not perceive any constitutional significance in the fact that payments are made in the form of reimbursement to the parents, a conduit plan or directly to the school. The economic consequences are the same for the church-related school. * * * In each case, tax raised funds are being used to subsidize religious education.

Similarly, in *Wolman* v. *Essex*, a unanimous three-judge district court, in a case decided also last April, said:

> * * * payment to the parent for transmittal to the denominational school does not have a cleansing effect and somehow cause the funds to lose their identity as public funds. While the ingenuity of man is apparently limitless, the Court has held with unvarying regularity that one may not do by indirection what is forbidden directly; one may not by form alone contradict the substance of a transaction.

The two decisions last cited were handed down after the 8-to-1 decision of the U.S. Supreme Court in June 1971 condemning parochiaid programs that had been adopted in Pennsylvania and Rhode Island. *Lemon* v. *Kurtzman*, 403 U.S. 602. The statutes there considered had been drafted in an obvious attempt to get around the principle established in the earlier cases cited above which condemned tuition grants. It was recognized that those decisions barred the transfer, direct or indirect, of tax-raised funds to sectarian schools which could then be used, in whole or in part, to finance sectarian instruction. Plainly, any such grant violates the primary effect test laid down in *Schempp*. Accordingly, the statutes were drafted so as to select out secular aspects of the operations of sectarian schools for State subvention.

The Supreme Court, however, held that this did not save the statutes. In a broadly worded opinion by Chief Justice Burger, the Court ruled that the statutory provisions designed to prevent the tax-raised funds from being used for sectarian purposes offended another aspect of the separation requirement—that there be no undue entanglement of church and state.

Plainly, this decision did nothing to clear away the obstacles placed by the Constitution on general financing in the form of vouchers. The *Lemon* decision did not detract from the Supreme Court's statement in the *Walz* case that the Constitution bars financial support by the Government of religious teaching. Indeed, the Court reiterated the *Walz* statement in *Lemon* (403 U.S. at 612).

This was clearly recognized by the three-judge district courts in *Lemon* v. *Sloan* and *Wolman* v. *Essex*. Thus, in *Lemon* v. *Sloan*, the court said:

> If the Act did include restrictions on the use of the funds, the Act would also have to avoid excessive government entanglement with religion in its administration of these restrictions. * * * The combination of the primary effect and entanglement tests clearly restricts the scope of permissible aid to religious schools.

The same point was made in a decision by a three-judge district court in New York, when it overturned a statute in that State which allocated direct payments to nonpublic schools to reimburse them for the expenses of administering examinations, maintaining enrollment and health records and preparing other reports required by State law. *Committee for Public Education and Religious Liberty* v. *Rockefeller*, S.D. N.Y., decided April 27, 1972. The court said:

> Either the statute falls because a system of surveillance and control would create excessive entanglement, or, without such a system, the schools would be free to use funds for religious purposes. The constitution is breached whichever route is chosen.

FINANCING BY TAX CREDITS

We submit to this committee that there is no difference between the arrangements condemned in these cases and the procedure specified in H.R. 16141—legally, financially, mathematically, or practically. The tax credit proposal simply uses the machinery of the tax return for conveying the same kind of payment which is made under the voucher procedure.

The net result is the same for everyone involved. There is the same amount less in the Government Treasury; there is the same amount more in the possession of the various schools. In both cases, the school is free to use the tax-raised money it receives for religious purposes.

Government financing of church-affiliated schools is financial support, regardless of the machinery used to effect the transfer of money from the state to the church. In any form, such a transfer brings about the practical evils which the first amendment was designed to prevent.

PURPOSE OF THE FIRST AMENDMENT

Those who wrote the first amendment and obtained its approval were practical men. Separation of church and state was for them not an abstract concept but a real necessity. Their experience told them that separation was best for the church and best for the state. Their foresight has been validated by the fact that for nearly two centuries we have enjoyed, on the one hand, a government almost entirely free of sectarian strife, and on the other, a steady growth in membership and participation by Americans in the religious bodies of their choice.

This committee has a historic opportunity to reaffirm the intent of the framers. It can say, firmly, that the claims made in recent years by sectarian schools on the public treasury are inconsistent with constitutional principle and that they will not be granted in any form, ingenuous or ingenious.

If, instead, this committee and Congress approve a tax-credit proposal, they will thereby open the way to increasing entanglement of government in sectarian strife and increasing dependence of religion on government support—twin evils which the first amendment has so far spared us.

THE EVIL OF ENTANGLEMENT

We wish to stress particularly the danger of entanglement. Obviously, H.R. 16141, if approved, would not be a final settlement of the issue of government support of church-affiliated schools. It would not be regarded by those who operate such schools as a limit upon what they may get in the way of government support. They would regard it as only a beginning. On the day the bill was signed, they would begin to urge raising of the maximum of $200 per child and they would continue doing so until it covered the full expense of operating nonpublic schools, excluding only what was purely sectarian.

Supporters of parochiaid have made it clear that what they seek is parity; that is, government financing of nonpublic schools to the same extent that public schools are now financed. Thus, Citizens for Educational Freedom, a nationwide organization which has largely led the campaign for support of religious schools out of tax funds, has asserted—in a pamphlet entitled, "We Ask Only Fairness":

> We seek fair and just treatment from the government, neither more, nor less. We believe that all school children, public or private, are entitled to share fully when the government spends public funds for the support of nonreligious subjects, textbooks, laboratory facilities, transportation and other items in the public interest of a nonreligious nature.

Thus this committee must face the question whether it is prepared to have the Government under constant bombardment concerning the amount of money to be devoted to maintenance of sectarian schools.

On one side, the bombardment will come from those religious groups which operate such schools and therefore have a direct stake in having the Government stipend increased. On the other hand, it will come from those religious groups which do not operate such schools and therefore object to having their members taxed for this purpose. It was with this in mind that Madison warned in his great memorial and remonstrance, that "the same authority which can force a citizen to contribute three pence only of his property in support of any one establishment, may force him to conform to any other establishment in all cases whatsoever." Quoted in full in *Everson* v. *Board of Education*, 330 U.S. 1, 63 to 72 (1947).

This aspect of the first amendment was one of the independent bases for the June 1971 decision of the Supreme Court in the parochiaid cases. In comments that apply equally to all parochiaid measures—including those that do not contain provisions requiring State supervision of church schools—Chief Justice Burger said (403 U.S. at pp. 622–623):

> A broader base of entanglement of yet a different character is presented by the divisive political potential of these state programs. In a community where such a large number of pupils are served by church-related schools, it can be assumed that state assistance will entail considerable political activity. Partisans of parochial schools, understandably concerned with rising costs and sincerely dedicated to both the religious and secular educational missions of their schools, will inevitably champion this cause and promote political action to achieve thier goals. Those who oppose state aid, whether for constitutional, religious, or fiscal reasons, will inevitably respond and employ all of the usual political campaign techniques to prevail. Candidates will be forced to declare and voters to choose. It would be unrealistic to ignore the fact that many people confronted with issues of this kind will find their votes aligned with their faith.
>
> Ordinarily political debate and division, however vigorous or even partisan, are normal and healthy manifestations of our democratic system of government, but political division along religious lines was one of the principal evils against which the First Amendment was intended to protect. [Citations omitted.] The potential divisiveness of such conflict is a threat to the normal political process. [Citations omitted.] To have States or communities divide on the issues presented by state aid to parochial schools would tend to confuse and obscure other issues of great urgency.
>
> We have an expanding array of vexing issues, local and national, domestic and international, to debate and divide on. It conflicts with our whole history and tradition to permit questions of the Geligion Clauses to assume such importance in legislatures and in our elections that they could divert attention from the myriad issues and problems that confront every level of government. The highways of church and state relationships are not likely to be one-way streets, and the Constitution's authors sought to protect religious worship from the pervasive power of government. The history of many countries attests to the hazards of religion's intruding into the political arena or of political power intruding into the legitimate and free exercise of religious belief.
>
> Of course, as the Court noted in *Walz*, "[a]dherents of particular faiths and individual churches frequently take strong positions on public issues." *Walz* v. *Tax Commission*, supra, at 670, 90 S. Ct, at 1412. We could not expect otherwise, for religious values pervade the fabric of our national life. But in *Walz* we dealt with a status under state tax laws for the benefit of all religious groups. Here we are confronted with successive and very likely permanent annual appropriations that benefit relatively few religious groups. Political fragmentation and divisiveness on religious lines are thus likely to be intensified.

We recognize that support of Government aid to sectarian schools is substantial, vigorious, and outspoken. This committee will remember, however, that American voters have opposed the subsidizing of religious schools whenever they have passed on the issue. Two of these votes took place in 1970, in Michigan and Nebraska.

In Michigan, an amendment to the State constitution had been prepared in order to nullify laws that had been adopted in that State giving aid to parochial schools and to bar other forms of aid that might be considered in the future. It included the following language:

> No payment, credit, tax benefit, exemption or deductions, tuition voucher, subsidy, grant or loan of public monies or property shall be provided, directly or indirectly, to support the attendance of any student or the employment of any person at any such nonpublic school or at any location or institution where instruction is offered in whole or in part of such nonupblic school students.

There was vigorous and active opposition to the amendment. Virtually every candidate for statewide office opposed it, as did most newspapers. Yet, it was passed by a vote of almost 3 to 2.

In Nebraska, the opposite situation existed. A proposal on the ballot would have amended the State constitution to permit "grants for the benefits of students enrolled in nonpublic schools, " reimbursing them for that part of the tuition which could be allocated to secular instruction, up to a limit of "one-third of the per student cost" in the affected school district. This proposal was also defeated by close to a 3 to 2 margin.

Three years earlier, in 1967, New York State voters considered a comprehensive revision of the constitution of that State. The proposed revision included a repeal of the provision in that constitution which bars State aid to sectarian schools. The proposed revision was rejected by a 2½ to 1 vote, and most commentators were agreed that the reason for the rejection was the proposed repealer.

The considerations outlined above have persuaded the undersigned organizations that the constitutional requirement of separation of church and state, as it has been viewed in this country for more than two centuries, is sound. It is for that reason that we oppose both tax credits and rebates of tuition payments to parochial schools. We regard these practices as improper deflections to religious institutions of funds properly payable to the public treasury.

In conclusion, the undersigned national Jewish organizations urge this committee to disaprove title II of H.R. 16141 and all other pending bills that would extend government aid to religiously affiliated schools in the form of tax credits.

They express their support of the objectives of title I of H.R. 16141 and suggest that this committee give the matter of equalizing the financing of public schools close study and, ultimately, favorable consideration.

Thank you, gentlemen.

Mr. GIBBONS (presiding). Thank you, sir.

Are there any questions?

Mr. CAREY. Mr. Chairman.

Mr. GIBBONS. Mr. Carey.

Mr. CAREY. May I extend a personal welcome to the distinguished representatives of a very, very outstanding group of people of the

Jewish faith with whom I have been affiliated on many organizational and civil libertarian drives. I want to commend you on your very well constituted opinions.

I recall in my research on the famous *Pierce* case, decided in 1922 or 1925, that the momentous opinions evidenced in that case largely came from an outstanding contributor in the field of constitutional law, Mr. Louis Marshall of the American Jewish Committee.

Do you think that your views held here are consistent with the views expressed by Marshall at that time?

Mr. ARENT. Unfortunately, Mr. Carey, you have done your research much more thoroughly than I. I do not recall what Louis Marshall said at that time. I do know that the organizations in question, having followed the fight for separation of church and state over the years, have with great reflection reached the present opinions which I have expressed here and would stand by them with all due respect to Louis Marshall, if his position was different. I cannot say whether it was or not.

Mr. CAREY. Just so we can keep up the dialog with the groups represented here, I will forward you some of the statements made by Mr. Marshall in connection with that case.

Mr. ARENT. Thank you very much.

Mr. CAREY. Now I recognize the very definite interest in the issue of religious education by all of the organizations represented here. Would I be correct in concluding, however, that these organizations, by and large, are not as heavily involved in education as are other Jewish organizations which are not represented here?

I am referring to the National Association of Hebrew Day Schools and Agudath Israel of America. Would they be more heavily involved in religious education than the groups testifying today?

Mr. ARENT. I think your statement might have been true at one time, Mr. Carey. I don't think it is true any longer because the American Jewish community has undertaken to finance a very widespread group of religious schools in the hope of maintaining Jewish identity and commitment. Therefore, the reform movement and the conservative movement as well as these other groups which are not strictly religious organizations are very much committed to and are undertaking to raise very substantial sums of money to advance Jewish schools, Jewish education.

The orthodox groups which have always differed from the rest of the Jewish community on the question of State aid are very small numerically in comparison with the entire spectrum of the religious group. They are certainly well under a quarter of the total community, and I think it is well under 20 percent.

Mr. CAREY. You and I are very zealous, though, of a minority's right to be heard and to have its views considered. So the fact that the orthodox groups are smaller in size renders them no less significant to me. I have found that they have lesser means of support than some of their coreligionists.

It has been found recently that the third largest group of poor people in New York City is the Jewish people of, basically, the orthodox faith. That is why I am wondering whether they would agree with your statement "that the Jewish community has the resources to finance Jewish education adequately without aid of the government funds." Would the same be true of this group?

Mr. **Arent**. I think they have agreed that the community has resources. What they have questioned is the commitment of the Jewish community to apply those resources on the scale they would like, but they are getting support from the community as a whole and not merely from the orthodox group for their own educational programs.

We plainly recognize that they do not have the same concern about constitutional principle here that we have and have therefore always said, "We would like community money, and we would like Federal money, normal too."

As I say, they are very distinctly the small minority in the Jewish community.

I might say that they are members of the National Jewish Community Relations Advisory Council of which I am national chairman, and we embrace not only these eight organizations and the orthodox group, but 93 Jewish community councils around the country.

The only reason I am not speaking in behalf of the groups is that the process of getting clearance from all these groups would have delayed things unduly. Our experience has been, however, that the community councils have consistently gone along with the views of the eight groups for whom I am speaking today.

Mr. **Carey**. Certainly there can be no equivocation on the need for Congress to be extremely zealous in precluding entanglement in any way, shape, or form which would contribute to the diminution of religious freedom in our country. I just want to add the same inquiry that was made by the distinguished ranking minority Member. How can a tax credit become a form of entanglement which is unsupportable or indefensible when the tax deduction, which has been used to support many of the groups you represent here today, has not been found to be that form of entanglement?

Mr. **Arent**. I see quite a distinction. The deductibility of contributions for eleemosynary purposes, charitable purpose of all kinds, including religious purposes, (*a*) has a long history; (*b*) does not single out or overemphasize the religious institutions. They are one relatively modest part of the whole spectrum of public encouragement through a tax deduction of doing good for the public in general.

The Supreme Court in the *Walz* case concluded that there was much less danger of entanglement in religious and sectarian strife to continue this historical deductibility than to get into the matter of denying it to one part of this group which for so many years had been receiving it.

The line is not easy to draw, as Mr. Ennis stated, but I think that clearly a provision here which says if you spend money on a religious school or a private school, but we know we are talking primarily of the parochial, the sectarian schools, if you spend money on tuition for those schools, the Government is going to reimburse you, is indistinguishable from giving money to the schools.

Where will the strife come in? If you are going to adhere to the constitutional principle, the money cannot have a primary purpose of aiding religion. When $200 goes to a parochial school, as one of the three-judge district courts said, either the State is going to have to police the operations of the schools and see to it that this money gets used only for allegedly permissible secular uses, or you are going to have money going directly in aid of religion.

So, you have the same entanglement as if you were handing the school the $200. The courts have said you cannot give the school the $200. If you try to allocate it so that it is not used for religion, you are going to get into an intanglement which will cause great trouble for us in this country.

I don't see how you can avoid it, if you are going to adhere to the constitutional principle of separation of church and state, by giving money to the parent rather than to the school.

Mr. CAREY. Your answer is more enlightening than was Mr Ennis' response You have gone into the issue more deeply, and I think have made a more reasonable argument in showing the distinction as the court may see it. But I respectfully disagree with your point that we can say that certain charitable institutions are within the general welfare and hence qualify to receive support, yet at the same time separate education from this category and say this is more dangerous ground.

I think that this is the question with which we have to contend. Where are the limits of "general welfare"?

If we say general welfare does not include education, then probably we should not have passed the poverty program, Headstart, and many of the programs which, although essentially not strictly educational, are in support of education. This is a hard distinction for me to draw. That is why we are here.

As to entanglement, it has been said before in the committee that perhaps we could include safeguards in the bill which would bring more support from groups such as those you represent. I think we agree that to meet the curriculum requirements and standards imposed by most, if not all, of the States, religious education cannot be the major part of the instructional day or the instructional program.

If, then, we would agree that religious instructions could not be, for example, more than 20 percent of the total educational program, and if we would limit the total credit to, for example, less than 50 percent of the per-pupil costs, would it not be true that we would not be subsidizing religion because we would not be subsidizing 50 percent of the secular instruction?

In other words, there would always be a gap between the cost of secular instruction and total cost of the child in the school. That would then allow no overburden for religious instruction.

Mr. ARENT. Catholic leaders have been very frank in expressing their recognition that the religious instruction pervades the full program of instruction because of the overall objective in the program.

I can give you an example out of my own experience that confirms this. Father Eddy Meehan, now deceased, was one of my friends at Cornell. He took a course in medieval history from a distinguished professor by the name of Hammond. Hammond was giving a historical view of the Renaissance. Father Eddy Meehan wrote what he considered the Catholic point of view on these events with full knowledge that it would cause him to flunk the course.

Now teaching history in a parochial school has to have that kind of overtone.

Even in teaching mathematics some of the examples used are examples that come out of a Catholic or religious context.

Of course the same is true of our Jewish parochial schools which have the same slant. I think it is inevitable. I think it would fail to achieve the objective of the parents who send their children to those schools if there were not that kind of slant.

I think you are doing a great disservice to the religious institutions by subsidizing them and putting them in a position where perhaps they have to change their slant.

Mr. CAREY. I think you missed the point of my question. I was not talking about the pervasive notion of education. I think all education has a philosophy or it is not education. I do not know how you divorce education from philosophy. If you subtracted philosophy and added theology, perhaps we come to agreement as to what happens in a religious school.

I did not intend to enter into a very complicated maze of what constitutes educational matters. I was talking about the level of support. If we agree that the church wants to remain free of entanglement, the level of support can never exceed, say, more than 50 percent or 30 percent, whatever the case may be, of what the costs are to educate a child. There will always be then the burden on the religious institution to pay for its share of religions instruction.

In other words, there will never be a subsidy by the Federal Government for religious instruction.

Mr. ARENT. I don't see how that gets you away from the problem of engangIement which Chief Justice Burger has stressed so much because unless you establish a limit of 20 or 30 percent by constitutional amendment, each election campaign will involve the question of increasing that amount. It is a political issue from day to day.

Mr. CAREY. I hope you will admit that often the purpose of Congress is to resolve political questions without further unhinging the political system. I know of nothing more divisive than our political system. Yet the Congress saw fit to use the very same device we are talking about here—tax credits deductions—to subsidize major political parties.

I know of nothing more divisive at this moment than the contest going on between the major political parties. I hope the church does not get as fragmented as the parties are today. Yet Congress saw fit to continue the political dialog in the interest of democracy.

The wise decision was the granting of tax credits for political contributions. I daresay that we will not find the Government entangled in the political parties any more than it already is.

Mr. ARENT. You didn't have the first amendment with all the sensitivity involved in that area.

Mr. BRODY. I might say, Mr. Carey, in response to your question, of course *Kurtzman* involved direct aid to church-related schools, and what the Pennsylvania and Rhode Island Legislatures attempted to do there was to make sure that the aid went only for the purpose of teaching secular and nonsectarian courses.

Nevertheless, the Court invalidated the statutes in that case, and I think the same principle would apply to the question you raised with respect to reimbursing the parent for an amount substantially less than the total cost of the religious education.

Mr. CAREY. Let it be understood that if the Court had resolved the issue in the *Lemon* case, we would not be here today.

Mr. BRODY. I am not saying that it did. To follow up on what Mr. Arent said before, Chief Justice Burger also specifically made that point when he said that notwithstanding the best of intentions such a teacher would find it hard to make a total separation between secular teaching and religious doctrine.

Mr. CAREY. I recall that. Frankly, the dilemma I face now is how the Court could have said all it did in the *Lemon* case and then, on the same day, hand down a decision in the *Tilton* case which gave practically magna carta of aid in all forms, save one slight caveat, to the entire field of higher education. If you can reconcile the Court's wording in those two cases, you will do us a great service.

Mrs. GRIFFITHS. (presiding). Are there further questions?

Thank you very much for your testimony.

The committee will stand recessed until 2 o'clock this afternoon.

(Whereupon, at 12:05 p.m. the committee recessed to reconvene at 2 p.m., the same day.)

AFTER RECESS

Mr. CAREY (presiding). The committee will come to order for the further consideration of the various bills relating to tax credits.

The next witness is Mr. Charles J. Ruppert on behalf of Parents' Council of Independent Schools and the Federation of Home School Associations of the diocese of Buffalo.

Mr. RUPPERT.

STATEMENT OF CHARLES J. RUPPERT, APPEARING ON BEHALF OF THE PARENTS' COUNCIL OF INDEPENDENT SCHOOLS AND THE FEDERATION OF HOME SCHOOL ASSOCIATIONS OF THE DIOCESE OF BUFFALO

Mr. CONABLE. Mr. Chairman, I would like to welcome Mr. Ruppert here. I know he came in this morning with Congressman Dulski. Congressman Dulski would have liked to have stayed to introduce him to the committee. Mr. Ruppert is a fine representative of our area and up in western New York we are proud of the work his organization does.

Mr. RUPPERT. Thank you, Mr. Congressman.

Mr. CAREY. Mr. Ruppert, you may proceed with your statement. If you wish, you may include it in the record in full, or you may address it in summary, as you wish.

Mr. RUPPERT. I would appreciate recording it in full. It will be short testimony.

Mr. CAREY. You may proceed.

Mr. RUPPERT. Mr. Chairman and members of the committee, I am Charles J. Ruppert and I am speaking in behalf of the Parents' Council of Independent Schools and the Federation of Home School Associations of the Diocese of Buffalo. These organizations represent over 100,000 parents of approximately 70,000 children in the nonpublic schools in the western New York area. I am secretary and past president of the Parents' Council of Independent Schools and father of eight children, all of whom have been or are presently being educated in the Buffalo Catholic school system. I just represent the average parent needing financial help.

I would like to speak briefly on the necessity of maintaining freedom of choice in education; second, the economic problems afflicting parents who exercise this choice by sending their children to nonpublic schools, and third, the urgent need for financial relief for parents via some form of tax credit.

While our Constitution and courts have guaranteed us this freedom of choice, it is more and more becoming an economic impossibility to exercise this choice. The need to preserve this freedom of choice is highlighted by the fact that in many underprivileged areas parents choose to send their children to nonpublic schools. As an example, in a recently consolidated innercity parochial school in the city of Buffalo, approximately 80 percent of the 800 students are non-Catholic and their parents are paying $60 per year to exercise this freedom of choice. The nonpublic schools provide a diversity which our educational system would otherwise lack. They not only provide knowledge but also a system of values which inform the moral and ethical choices one must make throughout his life.

The more one appreciates the quality of education provided by the typical nonpublic schools, the more urgent their preservation becomes. In the diocese of Buffalo, for example, standard tests demonstrate that children in Catholic elementary schools exceed the national average by an everincreasing margin as they progress from kindergarten through grade eight. This phenomenon occurs despite the fact that the distribution of IQ's among the student population is normal.

Inasmuch as a pluralistic society has been part and parcel of this country since its very inception, it is absolutely necessary that a realistic freedom of choice in education be maintained. It appears that Russia and the United States are the only two countries that discriminate against nonpublic schools.

The economic problems afflicting parents who exercise this freedom of choice of education by sending their chileren to nonpublic schools continue to mount. These parents make many sacrifices to support the two school systems. For the average working man and the underprivileged this freedom of choice is fast disappearing. The inflationary pressures afflicting nonpublic schools with a resultant increase in the cost of tuition is fast making the exercise of this precious freedom an economic impossibility for more and more parents. Mothers are going to work, fathers are working two jobs, and discrimination is occurring within families where some children are sent to nonpublic schools and others must attend the public schools because of a shortage in family funds.

Present unemployment rates of 11 percent in Niagara County and 9½ percent in Erie County serve to compound these economic problems.

All Americans are enjoying the benefits produced by both school systems but the fact that some Americans are penalized by exercising this freedom of choice offends the American spirit of fair play. For example, it costs the Catholic community in New York State approximately $172 million a year to operate the parochial schools. In New York State alone it would cost taxpayers over $400 million to absorb the students in these schools.

In the span of 5 years it has been necessary to increase tuition in our diocesan high schools from $150 to $400. Further increases in tuition are inevitable. More and more the average family can no longer afford to send their children to nonpublic schools. The average per-pupil cost in the Buffalo diocese is $216 in the elementary schools and $550 in secondary schools. This is well below the average per-pupil expenditure of $1,400 in New York State's public schools. Obviously a tax credit of only a few hundred dollars would help restore balance to our plural educational system.

It is therefore our recommendation that some form of tax credit be given directly to the parents. It is my understanding that over 100 tax-credit bills have been submitted to this committee and it is our hope and prayer that you will see fit to recommend one that most suits our immediate needs.

It is our recommendation that tax credit for tuition be extended only to the parents whose children attend schools meeting State and Federal educational standards conforming to the Civil Rights Act of 1964. All the nonpublic schools represented by our organization have been approved by the New York State Education Department. It is not our intention, now or in the future, to expect Government to support the entire cost of tuition for nonpublic schools. However, we must keep in mind that time is of the essence and too little or too late could be chaotic.

In closing, I wish to thank this committee for your interest and concern and I trust you will submit a tax-credit bill that will enable us to maintain our freedom of choice in education.

I thank you.

Mr. CAREY. Thank you, Mr. Ruppert, for a very thoughtful statement representing the views of a parent and considering the resolution of this issue for all the people of our country.

The gentleman from New York.

Mr. CONABLE. I have no questions.

Mr. CAREY. Thank you, Mr. Ruppert.

Mr. RUPPERT. Thank you, gentlemen.

Mr. CAREY. The next witness is the Honorable Thomas Laverne, chairman of the Special Committee on School Finance, National Legislative Conference (NLC).

Mr. Conable.

Mr. CONABLE. Mr. Chairman, Senator Thomas Laverne was here earlier. Unfortunately, he was under a tight schedule and had to leave. We very much regret this. We hope that in the future he will let us know if he is under such a time pressure. Mr. Desmond, who is the staff director of the joint legislative committee of which Senator Laverne is the chairman, is appearing to give Senator Laverne's testimony before the committee. Senator Laverne has a written statement which Mr. Desmond will present. I would like to welcome Mr. Desmond also.

I served in the State Senate in New York. I have a high opinion of the staff there and I am very familiar with Senator Laverne who comes from the metropolitan area I also represent. I would like to welcome Mr. Desmond as he presents Mr. Laverne's statement.

Mr. CAREY. The Chair will join his colleague from New York in extending a warm welcome to Mr. Desmond and expressing the same regret that we did not have the privilege and honor of welcoming Senator Laverne in person. I have had the good fortune to know of his long-standing interests in all of the affairs of our State, especially as they appertain to the complexities of the affairs in New York City.

We respect him very highly even if he does represent a part of the State removed from my constituency.

I know I speak for the entire delegation of New York when I say that his work on the National Legislative Conference has been of great value to us in our deliberations on many problems before the Congress. So, Mr. Desmond, if you will proceed.

STATEMENT OF LEONARD J. DESMOND, STAFF DIRECTOR, NEW YORK STATE JOINT LEGISLATIVE COMMITTEE ON METROPOLITAN AND REGIONAL AREAS STUDY, PRESENTING STATEMENT OF HON. THOMAS LAVERNE (NEW YORK STATE SENATOR), ON BEHALF OF THE NATIONAL LEGISLATIVE CONFERENCE

Mr. DESMOND. Thank you, Mr. Chairman and Mr. Conable.

I would like to first of all introduce Senator Laverne's statement into the record.

Mr. CAREY. Without objection the full statement will be entered into the record at this point.

(Mr. Laverne's prepared statement follows:)

STATEMENT OF HON. THOMAS LAVERNE, NEW YORK STATE SENATOR

Mr. Chairman, distinguished members of the committee, I am Thomas Laverne' Chairman of the Special Committee on School Finance, National Legislative Conference (NLC) and a member of the NLC Executive Committee. I am also Chairman of the New York State Joint Legislative Committee on Metropolitan and Regional Areas Study; Chairman of the New York State Senate Standing Committee on Education; and a Commissioner of the New York State Commission on the Quality, Cost and Financing of Education (Fleischmann Commission).

I was invited to testify today on behalf of the National Legislative Conference on Title I of H.R. 16141, the proposed "Public and Private Education Assistance Act of 1972."

I am extremely happy to have the opportunity to testify on this bill. It is directly related to the work of the NLC Special Committee on School Finance, which I consider one of my most important responsibilities. This Committee, made up of fifteen state legislators from throughout the country, has studied the problem of school finance in great detail. The Committee was appointed last spring with the responsibility to: study the implications of the Serrano-type decisions; explore the options for State Legislators in responding to these decisions; and present recommendations to the National Legislative Conference.

SUBSTANCE OF TITLE I

I would like to summarize what I see as the substance of Title I of H.R. 16141—PAYMENTS TO STATES FOR PUBLIC ELEMENTARY AND SECONDARY EDUCATION. The bill would authorize $2.25 billion for a Public Education Trust Fund. Qualifying states would be eligible for Federal matching from this fund up to 10 percent of their total non-Federal funding for schools. States which provide at least 90 percent of the non-Federal funding of public education would qualify. States which provide less than 90 percent would qualify if they use the equalization formula described in Section 102 (b) (2)—or another formula which the Secretary of Health, Education, and Welfare funds to be similarly equalizing.

The effect of the formula specifically described in the bill, according to my analysis, would be to equalize revenues at the statewide average per pupil expenditure. It would give no State or Federal funds to district spending above the statewide average. I commend the basic approach of the program as an innovative design to encourage equalization. I will recommend changes to make that design more effective.

TECHNICAL PROBLEMS

In attempting to apply the bill's proposed formula to New York State, we encountered two technical problems in Section 102 (b) (2) (A). The first is that the number of pupils per district is not defined. There are at least three measures of number of pupils per district:

(1) The number of pupils in average daily attendance (ADA);

(2) ADA weighted for certain factors, or weighted average daily attendance (WADA), the measure now used in New York; or

(3) The number of pupils in average daily enrollment.

The Fleischmann Commission, among others, has recommended using the enrollment figure because the other figures penalize schools which have high truancy rates. They take away resources from school districts which in fact need more resources. Incidentally, the State of Minnesota adopted the enrollment measure in its school finance reform legislation of 1971. I recommend that Federal legislation adopt that definition.

The second problem in Section 102 (b) (2) (A) is the term "assessed value." In New York State, as in other states, property is assessed at a precentage of full value. This percentage varies from district to district. It varies within districts, and even within classes of property in a single district. For the purpose of determining state aid, we equalize assessment ratios among taxing units. This is done by taking a sample of assessments in a taxing unit, to determine its assessment ratio, and then applying and equalization formula, to make the unit's assessments comparable to those of all taxing units within the state. It is this "equalized assessed value" which must be used in any statewide formula. If assessments are used to determine a distribution of funds among states, they must then meet a common national standard. The preferable standard would be equalized assessments at full market value.

In my testimony, I will cover the following points:

(1) The underlying concern shared by the sponsors of this bill and the National Legislative Conference;

(2) The Special Committee's basic principles for State action in school finance, and the need for Federal aid to put these into practice;

(3) The basic principles proposed for Federal aid; and

(4) The need for property tax reform.

1. Shared concerns

Let me start by saying that I share with Mr. Carey, a fellow New Yorker, the concern he expressed when he introduced the bill, for himself, Chairman Mills, Mrs. Griffiths, Mr. Rostenkowski and Mr. Karth. Mr. Carey noted that, with the present system of school finance being challenged in State and Federal court decisions, "it would now seem appropriate that Federal funds be made available to assist States in equalizing the educational opportunities of public school students."

The Special Committee on School Finance joins Mr. Carey in his conclusion that the law developing from the school finance cases is based upon a sound principle, that the quality of a child's education must not depend on the wealth of his parents and neighbors, regardless of the judicial result. As the Special Committee said in its final report ot the National Legislative Conference:

> Regardless of future court actions, we believe the principle established by *Serrano*, so far as public education is concerned, is essentially reasonable and equitable and ought to serve as a policy objective for every State.

2. Recommendations for State action

Before presenting recommendations on changes in Federal aid to the public schools, I will discuss our recommendations for changes at the state level. We recognize that public education is primarily a State responsibility, and that States must take steps to reform the school finance system. At the same time, we hold that the reforms necessary at the state level will be impossible without Federal help.

Our studies and discussions focused on four different approaches considered in New York, Michigan, Minnesota and Kansas.

(1) New York's Fleischmann Commission called for full state funding, a uniform-rate statewide property tax, equalized spending with allowance for special educational needs, and Federal aid at the level of 25 to 30 percent of the total cost of public education.

(2) The Michigan plan recommends a shift from the local property tax to state taxation and equalization of pupil-teacher ratios (rather than equalization of per pupil expenditures).

(3) The Minnesota plan involved a thorough reform of the existing program, raising the state share of school costs from 43 percent in 1971 to 65 percent this

year and 70 percent next year. The measure of numbers of pupils was changed from average daily attendance to average daily membership.

(4) The Kansas plan proposed a "district power equalizing" approach, with a given level of per pupil expenditure guaranteed for a given tax rate. Local districts could use either a property tax or an income tax.

After considering the problems and the variety of plans devised to cope with them, we developed a set of basic principles for the reform of school finance. We adopted positions on proposed Federal policy, but many of the basic principles pertain directly to the States. Because one of the key roles of the Federal government is to use its strong revenue-raising capacity to help states to do what they must, I will briefly summarize our recommendations to the states.

We recommend that states:

(1) Take on full responsibility for ensuring that the collection and distribution of funds for the public schools is equitable.

(2) Stabilize, or better still reduce, their reliance on the local real property tax for funds for the schools. States which continue to rely on the property tax should review and, wherever necessary, reform the administration of the property tax. Reform is especially needed, and especially difficult, in assessment practices.

(3) Recognize that although central cities tend to have a relatively high total assessed valuation, they also have high demands for public services. The higher costs of running city schools contribute to this problem of "municipal overburden."

(4) Equalize up to the levels of expenditure in the more affluent districts, rather than down to the poorer districts. We suggested the 65th percentile as an appropriate level.

(5) Develop both a cost-of-education index and an educational-need index. This would make it possible to establish reasonable differentials in funding formulas. Equality of educational opportunity does not necessarily mean equal amounts of dollars per student. As the President's Commission on School Finance said, "to offer children only equal education, disregarding differences in their circumstances is merely to maintain or perhaps even to magnify the relative effect of advantage and handicap."

(6) Keep policy decisions and administrative control at the local level, regardless of how states decide to finance thier public schools. This is a matter of placing responsibilities at the level best suited to fulfill them. If school boards are relieved of the responsibility of raising funds, they will be able to focus their attention on substantive matters, on improvements in the quality of education.

(7) Recognize that, when a state takes on fiscal responsibility for the schools, it should also play a larger role in determining teacher salaries, which account for approximately 75 percent of school costs.

(8) Must demonstrate the ability to handle added funds effectively if states are to expect greater flexibility in Federal aid. Each state should review the effectiveness and accountability of the Department of Education in its dealings with local districts.

These reforms will require a major effort on the part of the states. Nevertheless, when we presented our recommendations on August 3 at the annual meeting of the National Legislative Conference, they were adopted unanimously. It is important to keep this significant commitment in mind when you hear what we propose for Federal action.

Reform in real property tax administration, particularly in assessment practices, is a particularly difficult task. This reform should be encouraged in any plan adopted for increasing the level of federal aid.

3. Federal role in Federal-State partnership

I would like to turn now to what the Special Committee recommended for the Federal role in a Federal-State partnership in education. Two factors combine to make educational opportunity a matter which extends beyond state lines: The increasing mobility of American citizens and the extent to which education can affect individual opportunities. A strong Federal-State partnership is essential.

Studies show that the average state would have to increase its taxes by more than 30 percent in order to finance 90 percent of the cost of public education. But the Federal tax structure limits the ability of states to raise the revenues needed.

(1) We recommend that the Federal government increase the level of federal aid to the public schools substantially above the present 7 percent level. The level of funding suggested by such studies as the National Educational Finance Project and the Fleischmann Commission is in the range of 25 to 30 percent.

(2) We also recommend that Federal funding be designed to help the states to equalize resources and that it take the form of block grants for education rather than narrow categorical grants.

(3) Endorsing a recommendation of the President's Commission on School Finance, we call for Federal legislation which would guarantee the schools, in case of any delay in Federal appropriations, 80 percent of the previous year's Federal funding. We also urge that the appropriation process be changed to enable school districts to know the exact amount of Federal aid well in advance of a school year. Our discussions revealed that the uncertainty of the amount and timing of Federal appropriations is a major problem.

The matter of reforming the school finance system is only in its beginning stages. We recognize the need for a continuing effort on the part of all groups with an interest in the schools to develop a system which is equitable to the taxpayers, adequate for the schools and so constituted that fiscal responsibilities are placed where the fiscal resources exist.

4. Property tax reform and national goals

I want to emphasize the urgent need for reform of the real property tax. This tax, overburdened with the massive function of supporting education, has a number of side-effects which conflict with national goals. We want integrated housing, but our school finance system contributed to residential segregation by social and economic class. We want businesses to be located near housing, but the property tax burden is an incentive to localities to play the "zoning game," attracting commercial and industrial ratables while keeping out moderate-income housing for those who would fill the jobs. Reform of the school finance system, besides providing equal educational opportunity for our young people, would help us to achieve other national goals as well.

SUMMARY

I would like to summarize the concepts I have presented in my remarks by relating the concerns of the Special Committee to H.R. 16141.

(1) I applaud the intent of the bill, which seems to be an incentive to States to adopt effective equalization programs.

(2) The bill's adoption of the state-wide average expenditure as the equalizing level is lower than the 65th percentile level recommended by the Special Committee. The Fleischmann Commission also recommends leveling expenditures up to the 65th percentile.

(3) One effect of the use of the statewide average would be to penalize higher-cost districts and districts with high concentrations of disadvantaged students. Large cities would be particularly hard hit. The final formula should include some weighting to compensate for regional cost differentials (particularly municipal overburden) and educational need.

(4) The level of funding proposed in the bill, presumably in addition to existing Federal school aid programs, is a step in the right direction. It would raise the Federal contribution from 7 percent nationally to 11.8 percent. The bill appropriates a constant $2.25 billion per year. We would like a substantially higher level of Federal funding, and we would prefer to have the annual appropriation increase in proportion to increases in school costs.

(5) A school finance reform bill should include an incentive fund to encourage and enable states to reform their real property tax administration systems. The techniques exist for making this tax more equitable. But there are extremely difficult problems involved in putting these techniques into practice. This must be done, however, if we are to reduce or stabilize the property tax.

(6) The bill should contain an incentive to reduce reliance on the real property tax. It does not now contain this sort of incentive.

DOCUMENTS SUBMITTED FOR THE RECORD

Before closing, I will submit for the record copies of some documents which I believe will help you and your staff in dealing with the school finance problem:

(1) The report of the National Legislative Conference Special Committee on School Finance;

(2) "A Legislator's Guide to School Finance," prepared for the Special Committee and published by the Education Commission of the States; note that the preceding document is the final version of the report presented in pages vi to xiii of the "Legislator's Guide."

(3) The 1967 report of the Joint Legislative Committee on Metropolitan and Regional Areas Study, "Governing Urban Areas: Regionalism and Reform," referring particularly to Chapter 3, "Regionalism and Public Service: Call for Innovation," which deals with the real property tax and school finance, pages 71–102;

(4) Appendix XI to the 1967 report, which delas with revenue sharing generally;

(5) The 1968 report of the same Joint Legislative Committee, "Governing Urban Areas: Strengthening Local Government Through Regionalism," noting particularly Chapter 4, "Public Education, Public Welfare and Metropolitan Areas," pages 163–194; and

(6) Volume I of the report of the New York State Commission on the Quality, Cost and Financing of Elementary and Secondary Education (the Fleischmann Commission).

Thank you for the opportunity of appearing before this Committee to testify on a bill which deals with one of the major crises facing our nation.

PERSONAL COMMENTS ON TITLE II: INCOME TAX CREDITS

I would like now to make some personal comments on Title II of Mr. Carey's bill. This title deals with income tax credits up to $200 for tuition paid to private schools. I am not speaking now for the National Legislative Conference. The NLC has no policy position on this issue.

The plan proposed by the bill is sound. The constitutionality of a similar plan was upheld July 1972 in a Minnesota case, *Minnesota Civil Liberties Union v. State of Minnesota*. The non-public schools face a fiscal crisis which could lead to the collapse of the private school system. Such a collapse would endanger the diversity which is vital to our democracy. It would also place an added strain on the public school system, making it difficult to sustain quality education.

I favor the plan proposed in this bill. It has been suggested that money for this program would have to be diverted from funds which would otherwise go to the public schools. It would be a tragic mistake to harm the public school system in order to help the non-public schools. This nation has sufficient resources both to reform public school finance and to provide the partial aid necessary for the survival of the private schools.

Mr. DESMOND. I would like to summarize the contents of that statement.

Senator Laverne was invited to testify on behalf of the National Legislative Conference on title I of H.R. 16141. He is chairman of a special committee on school finance set up by the NLC to study the options available to State legislators in school finance reform. Title I of this bill is directly related to the special committee's work.

I would like also to introduce into the record the policy positions and final report of the Intergovernmental Relations Committee of the National Legislative Conference, adopted in August 1972.

Mr. CAREY. That is a rather extensive document, is it not?

Mr. DESMOND. It contains a report by the school finance committee. Perhaps we could include the report of the school finance committee.

Mr. CAREY. It would be helpful if you include the summary of the finance committee report. We will accept the publication for the committee files. Without objection, it is so ordered.

(The summary referred to follows:)

REPORT OF THE NATIONAL LEGISLATIVE CONFERENCE SPECIAL COMMITTEE ON SCHOOL FINANCE[1]

NOTE: This is the final version of the report. A preliminary version of the report was printed in *A Legislator's Guide to School Finance*, pages vi to xiii.

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[1] Senator Thomas Laverne, Chairman, adopted unanimously August 3, 1972, at the annual meeting of the National Legislative Conference.

Brown v. *Board of Education* set the stage for a new era of thinking as to the availability of certain fundamental rights to all citizens on equal terms. The case was based on two important assumptions:

(1) Education is perhaps the most important function of state and local government;

(2) It is doubtful that any child may succeed in life if he is denied the opportunity of an education.

The decision made it plain that there is no compelling state interest which will justify any racially discriminatory policy in public education.

Today, almost twenty years later, a new challenge is before the public and the courts—a challenge with ramifications as far reaching as those initiated by the *Brown* ruling. The courts are now being asked to consider the proposition that education is a fundamental personal right, protected by the State, and being asked to rule that the present system of elementary and secondary educational financing, which is conditioned on the wealth of a child's parents and neighbors, is unlawful.

Two major forces have brought this issue to the Nation's attention through the courts:

(1) The rising cost of public education, coupled to a growing resistance to further property tax increases, and

(2) The rising demand for equality in the distribution of public services.

In practically every State in the Nation, wide variations exist in the amount of taxable wealth available to local school districts. Because their taxing efforts have been limited to the availability of local revenues, the public school systems have been unable to provide equal educational opportunities to their children. Efforts by the States to eliminate, or at least reduce, these disparities in the delivery of educational resources have simply not been able to keep pace with the demands.

Challengers to the present school finance standards have shown that taxpayers in a "poor" school district are forced to make substantially greater contributions to provide substantially less revenue for the operation and maintenance of their schools as compared with what is required of taxpayers in a "rich" district. The Supreme Court of California has ruled, in the now famous *Serrano* v. *Priest* case, that the quality of a child's public education (as defined by the level of expenditures) must not depend on the wealth of the child's school district or family.

Since that August 1971 decision was handed down, similar challenges to the inequities in public educational finance have been made in several state and federal courts. To date none of these court cases have suggested:

(1) That the use of the property tax, as a tax source for public education, is unconstitutional; or

(2) That the same amount of dollars *must* be spent on each child within the State; or

(3) That the State must adopt any specific school finance system.

Though the parameters of this problem will only emerge on a case by case review of new State programs as they are enacted, the States still have a wide range of alternative school finance systems from which to choose to effect the twin goals of quality education and equal educational opportunity. Nevertheless, one principle is fixed and unequivocal: local wealth can no longer be a major determinant in providing educational opportunity to elementary and secondary school children.

The National Legislative Conference affirms the principle that all States have an obligation to provide an equal educational opportunity and quality education to all children attending public schools within their jurisdiction. We are in agreement with the principle established in *Serrano* v. *Priest* that the quality of a student's public elementary and secondary education should not be dependent on the affluence of his parents or school district. Regardless of future court actions, we believe the principle established by *Serrano*, so far as public education is concerned, is essentially reasonable and equitable and ought to serve as a policy objective for every State.

We recognize that varying Constitutional dictates and differing tax preferences within the separate States make it impossible to suggest any specific uniform school finance system that would meet the needs of all the States. Each State, therefore, will have to develop that system which best responds to its individual circumstances. Whatever general guidelines are agreed upon by the States, however, must be fair and equitable to both the taxpayer and the public school student, and must, by definition, include:

(1) Equalization of property taxes, and

(2) Control of local expenditure levels.

In order to accomplish these objectives, the National Legislative Conference makes the following recommendations:

I. Money alone will not cure all the ills of our public education system but no improvements can be made until the manner in which educational funds are raised and distributed is altered.

> The States, in line with their clear Constitutional jurisdiction over education, should assume full responsibility for regulating the collection and distribution of the revenue for public elementary and secondary education.

II. Evidence clearly shows that the manner by which local property taxes are levied for financing public education favors wealthy localities with a large non-residential tax base and penalizes those jurisdictions with a small non-residential base.

> The States, in fulfilling their responsibility in the area of educational finance, should move toward stabilization and, where possible, a reduction in their reliance on the local property tax as a revenue source for public education.
>
> States which continue to use the property tax as a source of educational revenue should initiate a review and, where necessary, a reformation of their property tax administration. Specifically, the States are urged to adopt a uniform system of assessment to assure an equalized property tax burden.
>
> The method of taxation used to supplement or supplant the property tax should have a growth factor comparable to the increase of educational costs.

III. Local, non-educational public services are financed largely from the property tax, and although the central cities tend to have a relatively large property tax base, the total burden placed upon their tax base usually is heavier than it is in areas where the demand for such public services as sewage maintenance, street lighting, fire and policy protection is low.

> In the attempt to equalize the costs of maintaining schools, States are urged to recognize those non-educational expenses, for example, municipal overburden, which affect local tax burdens.

IV. An equal educational opportunity implies an equalization of educational resources among school districts. In order to equalize resources among districts, two alternatives are available:

(1) Reduce educational funds from some districts to raise the resource level for others, or

(2) Provides substantially increased funds to raise the poorer districts' resources up to a level enjoyed by the more affluent systems.

The latter is obviously preferable.

> No school district should be compelled to reduce its level of expenditure while a State moves toward assuming its full role in financing and distributing educational funds.
>
> The equalization level is a matter to be determined by each State. However, it is recommended that the 65th percentile level of per-pupil expenditures be the minimum standard guaranteed by each State.

V. Equality does not mean identical treatment. The crucial value to be fostered by a system of public education is the opportunity to succeed, not the uniformity of success. While all are equal under the law, nature and other circumstances yield advantages to some, while handicapping others. Hence, as the President's Commission suggested, "To offer children only equal education, disregarding differences in their circumstances is merely to maintain or perhaps even to magnify the relative effects of advantage and handicap. Equal treatment of unequals does not produce equality."

A concept of equal educational opportunity should reflect a sensitivity to differentials in costs and variations in the interests and needs of those to be educated. Attempts at relieving disparities by attending to their differences will prove fruitless, however, unless those needs and costs can be clearly identified and fully quantified.

> We support the recommendation of the President's Commission on School Finance which calls upon the States to develop both a Cost-of-Education Index and an Educational Need Index.

VI. Although it is an accepted principle that the responsibility for education is primarily reserved to the States, no level of government—federal, state or local—can escape involvement in the educational process. The acceleration of change in American society, the vast mobility of its people, and the extent to which gross disparities in education can reflect adversely on the quality of an individual's life, have combined to make education a matter of concern extending beyond the boundaries of the several States. For the States to play a full role in the distribution of funds for elementary and secondary education, substantial tax increases will be necessary. Many surveys have concluded that the average State would be required to increase its revenue collections by more than thirty percent if it wished to assume ninety percent of the cost of public elementary and secondary education. Yet, the federal tax structure severely impedes the capacity of the States to develop revenues at a rate sufficient to meet increasing educational costs.

> The National Legislative Conference recommends that the federal government substantially increase its level of financial assistance (presently at seven percent) for public elementary and secondary education.
>
> Increased federal funding should serve the purpose of assisting the States toward greater equalization of resources.
>
> Federal assistance should take the form of block grants for education, designed to promote equalization, but should remain otherwise unrestricted.
>
> With respect to P.L. 874 funds, if they are not considered in a school district's ability to pay, any attempt by the State to provide equalization may be distorted. Accordingly, we urge Congress to give consideration to allowing those funds to count as local school district contributions.

VII. Federal assistance is necessary to maintain certain operating programs in elementary and secondary education. However even with federal assistance, many worthwhile educational programs are delayed or even eliminated because of the uncertainty surrounding the amount and timing of federal appropriations. Adequate foreknowledge of the amount of federal assistance is imperative if States are to properly structure their own appropriations and tax policy. Many educators feel they would rather not have the funds than not be able to depend on their timely authorization.

> In full endorsement of the recommendation of the President's Commission on School Finance, we urge the enactment of federal legislation that would guarantee to state and local school systems, in the event of delays in federal outlays, eighty percent of the funds provided in the previous year.
>
> We strongly urge the Congress to restructure its appropriation process so that school districts know well in advance of a school year the exact amount of their federal aid.

VIII. If the States are to assume a more active role in public education, especially in the realm of funding, and if they are to expect the necessary flexibility in federal assistance, States must demonstrate their ability to appropriate additional funds in an efficient manner.

> Each State should review its governance of education, the relationship of state departments and local districts, and the present and potential effectiveness and accountability of the Department of Education, in order to insure the efficient flow of both State and federal revenue and to guarantee that funds, be they State or federal, are applied for the purposes intended.

IX. The argument is made that a greater assumption of school financing responsibilities by the State will undermine, or perhaps even destroy, the tradition of local control of education. We believe that local control is not dependent on local tax raising ability. Local school districts are the creation of and responsibility of the State. Their authority to raise funds for education comes as a result of delegation by the State of part of its own taxing authority.

There is a distinction between local fiscal control and local control over policy. Local fiscal control is no longer a possibility if financial discrimination is to be terminated in public education. Insistence upon financial control over education by the State in order to eliminate fiscal discrimination in no way has to interfere with continued local administrative and policy control of the schools. On the contrary, the new standard of school finance encouraged by *Serrano* suggests that for the first time "poor" school districts will enjoy significant local control over educational policy which the lack of resources has previously made impossible.

Evidence fails to demonstrate any correlation between an increase in the State assumption of educational costs and loss of local decision-making authority. If anything, the evidence suggests that local decision-making power to shape the content of local educational programs is enhanced once local boards are freed of the burden of searching for the necessary resources.

> Regardless of how the States decide to finance their system of public education, they can and should leave policy decisions and administrative control in the hands of local districts. It is the State's obligation to insure that a basic educational package is delivered to all children on an equalized basis; it should be the local district's prerogative to determine how that package will be delivered.

X. At least 75 percent of current operating expenditures in education go into teachers' salaries and salaries of other employees. Because of the fiscal magnitude of this portion of educational costs, increased State responsibility in this area will be necessary.

> The National Legislative Conference recommends that as an essential corollary to state assumption of the fiscal responsibility for public education, the State should play a larger role in the determination of teacher salary schedules.

XI. The issue of school finance reform is only in the initial stages of debate. It is certain that reform will not come overnight—and may not come at all unless there is an ongoing effort of concerned organizations and interest groups to educate both the public and elected officials about the crisis facing us.

> In this regard, we wish to express our agreement with the general policy statement on Educational Finance Reform adopted by the National Governors' Conference. In particular, we endorse its two major recommendations calling for immediate action from the States toward equalizing educational opportunities and urging assumption by the federal government of far greater responsibility for the financing of education.

VII. The next session of Congress promises to be a critical one for the future of public education in the United States. All of the major funding bills for elementary and secondary education will be up for review. The National Legislative Conference looks forward to working together with other concerned organizations, such as the Governors' Conference and the Education Commission of the States, to press Congress for financial assistance to help States meet their responsibilities in public education.

> The Special Committee on School Finance recognizes that its task is not completed upon submission of this report. The Committee should continue to function in order to encourage the implementation of those recommendations agreed upon by the National Legislative Conference and to attend to the ongoing developments in the field of school finance reform. It should also expand its lobbying efforts with Congress and State Legislative Leaders and increase its public relations efforts to that end.

The National Legislative Conference has offered the preceding recommendations on school finance with an awareness that reform of the manner in which educational revenues are levied and spent is a necessary but not sufficient condition for the realization of the societal goals we have established. While there is much to commend in our education system, a great deal of work remains to be done before the promise of quality education is fulfilled. We are faced with a tremendous challenge and a great opportunity, for there is no more important business in an open, democratic society than the education of our young.

NATIONAL LEGISLATIVE CONFERENCE, SPECIAL COMMITTEE ON SCHOOL FINANCE

Appointed by Representative Bill Clayton, Chairman, Intergovernmental Relations Committee:

Senator Thomas Laverne, New York, Chairman.
Assemblyman William Bagley, California.
Senator Ernest Dean, Utah.
Senator Allen Dines, Colorado.
Senator Carl F. Dodge, Nevada.
Senator Wayne Dumont, Jr., New Jersey.
Speaker Herbert Fineman, Pennsylvania.
Senator Joseph C. Harder, Kansas.
Senator Jack Hightower, Texas.
Representative Tom Jensen, Tennessee.
Speaker Charles Kurfess, Ohio.
Senator Gene Mammenga, Minnesota.
Speaker William P. Ratchford, Connecticut.
Representative Martin Sabo, Minnesota.
Representative Ralph Turlington, Florida.

Mr. DESMOND. Thank you.

Speaking directly to the bill, the senator points out that the effect of the formula in section 102(b)(2) would be to equalize revenues to school districts at the State average per pupil expenditure. It would not give State or Federal funds to districts spending above the statewide average. He commends the program as an innovative design to encourage equalization. He has some suggestions to make that design more effective.

We ran into three technical problems in attempting to apply the formula in the bill to New York. The first is that the number of pupils used in the formula in section 102(b)(2)(A) is not specifically defined. There are three main choices in defining the number of pupils in a school district: Average daily attendance, weighted average daily attendance, and average daily enrollment.

In New York, we now use weighted average daily attendance. The Fleischmann Commission recommended changing the basis of that count to average daily enrollment. The senator recommends that the enrollment figure be used in the bill being considered here.

The second problem is the term "assessed value" in the second part of the bill's formula—section 102(b)(2)(A). "Equalized assessed value" would be a better term. Assessments vary from district to district in the percent of full market value that they represent. For the purpose of New York's State aid distribution, assessments are equalized among taxing units. For the purpose of distributing Federal funds, assessments would have to be equalized to a common national standard.

The third problem is the combination of limitations that are placed on a State's entitlement under the bill. There are three limitations in the bill. The first is that a State's entitlement may be no more than the amount of State aid given to the schools. The second is that, if the total claims against the fund set up by this bill are greater than the amount appropriated, payments would be reduced proportionately. The third limitation is that no State can receive more than 10 percent of its total nonfederal funding for education. This includes State and local funds.

The order of operation of these limits is not mentioned specifically in the bill, but the order in which the limits are applied would make a difference. We recommend that the 10-percent limit be applied first and the limitation to the amount of State aid be applied second, and that the proportional distribution be applied third.

The actual proportion to be used in the proportional distribution is not defined in the bill. We recommend that this proportion be based on levels of State aid.

On the substance of the bill itself, Senator Laverne wanted to cover four main points: (1) An underlying concern about the funding of the public schools shared both by the sponsors of this bill and the National Legislative Conference; (2) the recommendations by the NLC Special Committee on School Finance for State action in school funding; (3) the basic principles proposed for Federal aid; and (4) the property tax reform.

1. SHARED CONCERN

On the shared concern of the sponsors of the bill and the special committee, Mr. Carey said in introducing the bill that he felt that the law developing in the serrano-type school finance cases is a sound principle, and that Federal funds should be used to help the States equalize revenues for school districts.

The special committee made a similar finding. We recommended that States adopt that principle—that the quality of a child's education should not depend on the wealth of his parents and neighbors—regardless of how the issue is finally decided in the courts.

2. RECOMMENDATIONS FOR THE STATE ACTION

I will briefly summarize the recommendations that the committee made for State action. My reason for doing this is that States were asked to make a substantial commitment to change, and that the changes recommended would really be impossible without substantial Federal help.

In carrying out its task, the special committee considered approaches in four States on school finance reform. These were plans proposed for New York, Michigan, Minnesota, and Kansas. These four plans are described in detail in "A Legislator's Guide to School Finance." Copies of the booklet, which was produced for the special committee, have been supplied to your committee. If more copies are needed, we will be happy to make them available.

The principal recommendations of the special committee which related specifically to what is being attempted in this bill were: (1) States take on full responsibility for insuring that school finance is equitable; (2) that the question of the high cost of schools and other public services in the cities, sometimes referred to as "municipal overburden," be recognized in any program to change school finance; (3) that States equalize up to their more affluent school districts (the 65th percentile, which is above the level at which this bill's formula would equalize, was specifically recommended); (4) that States develop a cost-of-education index and an educational-need index to make it possible to allocate funds according to need and regional cost variations rather than strictly on an equal dollar per student basis; (5) that policy decisions and administrative control be kept at the local level regardless of the extent to which a State assumes responsibility for school finance (relieving local school boards of the responsibility of financing the schools would allow them to apply more of their energies to the substantive matter of reforming the schools, to questions relating to the quality of education); and (6) that the States play a larger role in determining teachers' salaries.

The reforms recommended here would require a major effort by the States. It is significant that these proposals were adopted unanimously by the National Legislative Conference, the nationwide organization of State legislators, at its annual meeting in August 1972. This is a commitment which should be kept in mind as we move now to the special committee's recommendations for changes in Federal school aid.

3. RECOMMENDATIONS ON FEDERAL AID

On the Federal role in a Federal-State partnership in education, the committee recommended, first, increasing the level of Federal aid substantially above what it is now. The present level is something like 7 percent nationwide. In New York it is about 4 percent.

The national educational finance project and the Fleischmann Commission have suggested that Federal aid be somewhere in the range of 25 to 30 percent.

Second, the committee recommended that Federal funding be in a form which would help States to equalize school district revenues and that Federal funding take the form of block grants for education rather than the present narrow categorical grants.

Third, the committee urged, together with the President's Commission on School Finance, that Federal funds to the schools be guaranteed at a level of 80 percent of the previous year's Federal funding. They also recommended that the appropriation process itself be modified so that school districts would be able to know well in advance of a school year how much Federal aid they would be getting. This would permit proper planning so that the funds can be used well

The committee also recognized a need, because this is just the beginning of an effort to change school finance, for a continuing effort by all groups interested in school finance to contribute to the development of a school finance system which is truly equitable to the taxpayers, adequate for the schools, and which places fiscal responsibility where the fiscal resources are.

4. REFORM OF REAL PROPERTY TAX

The final point that Senator Laverne makes is the urgent need for reform of the real property tax. It would influence a number of national goals, besides providing a sounder basis for school finance.

The property tax which has side effects which sharply conflict with several rather carefully articulated national goals.

We want integrated housing, but the effect of the property tax is to reinforce residential segregation. We are very concerned about urban redevelopment. To make community development programs more effective, there is a move on to reorganize Federal community development programs under a single Department of Community Development. The property tax, however, provides an incentive to the wrong kind of development. It is an incentive to localities to play the game of "fiscal zoning," competing for commercial and industrial ratables and at the same time trying to keep out moderate-income housing because of its presumed net loss to local government revenues.

The effect of this tendency of the property tax is to separate jobs from housing which exacerbates the transportation problem as well as the unemployment problem.

In summarizing now, the concerns of the special committee as they relate specifically to this bill, the Senator, first, commends the bill's incentive to States to adopt effective equalization programs.

Second, he points out that the use of the statewide average expenditures as an equalizing level is lower than the 65th percentile recommended by the special committee, and also, incidentally, by the Fleischmann commission.

Third, the use of the statewide average expenditure and the statewide average revenue in the bill's formula would penalize high-cost districts. It would penalize particularly the large cities. Although these cities have a high real estate valuation, they face high costs in providing public services and they have large concentrations of disadvantaged students.

I would like to submit for the committee's consideration a computer printout of the application of the bill's formula in New York State. The effect of using this formula would be to leave 178 school districts, out of approximately 740, with no State aid and no Federal aid under this bill. These districts include New York City, Albany, Rochester, and Yonkers, four of the "Big Six" cities in New York.

The formula should include a weighting factor for regional cost differentials, particularly "municipal overburden," and a weighting factor for educational need.

Fourth, Senator Laverne notes that the level of funding is a step in the right direction.

Mr. CAREY. We will receive the computer printout for the committee files.

Mr. DESMOND. We will be glad to submit that.

The level of funding is a step in the right direction. It would raise the Federal contribution nationally from 7 percent to 11.8 percent. The appropriation level for title I is $2.25 billion per year. We recommend a substantially higher level of Federal funding in the range of 25 to 30 percent. We also recommend, regarding the appropriation level in the bill, a provision to increase that appropriation annually in proportion to increases in school costs.

One of the problems with Federal aid to schools has been that it has not increased at a rate equal to the rate of cost increases. It peaked at 8 percent around 1965, and then the percent share supplied by Federal funds gradually decreased.

Fifth, the Senator recommends that the bill include some sort of incentive fund for reform of real property tax administration. This reform is a difficult thing to accomplish politically.

The property tax itself cannot be removed completely right away because income from it is massive and total abolition of the property tax would require a massive increase in other taxes. The property tax will have to be continued for some time.

To make increases in the Federal and State shares of school costs equitable, the property tax itself has to be made equitable. The courts have pointed out the variation in real property valuations available to districts. There is also a substantial amount of variation within taxing units in levels of assessment. Steps need to be taken to make assessments more equitable.

The sixth recommendation is that the bill should provide an incentive to reduce or stabilize the real property tax. Unless there is such an incentive, the most likely effect of increasing Federal funds would be that the schools would spend more money.

The seventh and final recommendation relates to the 10-percent limitation, in section 103(b)(2) of the bill, on entitlement to each State. Each State is limited to 10 percent of its total non-Federal spending for education. Senator Laverne recommends that the limitation be based on the level of State aid rather than on the level of total non-Federal spending.

The reason is that, if you use total non-Federal spending as the basis of the 10-percent limitation, you weaken to some extent the bill's incentive to States to assume a higher level of funding. The effect of using the bill's limitation would be to give a higher return on the dollar to States which have a lower level of State aid.

I would like to submit several other documents for the use of the committee. The first is a copy of the report of the National Legislative Conference Special Committee on School Finance.

Mr. CAREY. Mr. Desmond, may I ask that you submit those as a block, as they are listed in Senator Laverne's statement in paragraphs

1 through 6. They will be received for the committee records and appropriate entries made in the record.

Mr. Desmond. Fine.

I will now summarize Senator Laverne's personal comments on title II, the tax credit provision. These comments are not related to his affiliation with the National Legislative Conference. The NLC has no policy position on aid to private schools.

I would like to offer for the committee's consideration a paper, "Quality Education for All Children: The Case for Continued Aid to Nonpublic Education," prepared by Senator Laverne as a member of the Fleischmann Commission. Four other commissioners joined Senator Laverne in this dissent from the position against aid to private schools adopted by the Commission.

Mr. Carey. Without objection this document, along with the other documents which you specified in the previous testimony, will be received for the committee files.

Mr. Desmond. Thank you.

The Senator maintains that the plan proposed in the bill is a sound plan. The constitutionality of a similar plan was upheld this past July in a Minnesota case, *Minnesota Civil Liberties Union* v. *State of Minnesota*.

Mr. Brotzman. Do you have the rest of the citation on that?

Mr. Desmond. I do not. It was a Federal district court.

Mr. Brotzman. Mr. Chairman, I would just ask that the witness be permitted to furnish the committee with the citation. I think it would be a good thing for the committee to have.

Mr. Desmond. Yes, I will supply that.

Mr. Brotzman. If you will supply that at this point in the record.

Mr. Desmond. Yes, I will be happy to do that.

Mr. Carey. Without objection, so ordered.

(The citation referred to follows:)

Minnesota Civil Liberties Union v. *State of Minnesota*, 199 N.W. — (8th cir. 1972).

Mr. Desmond. The Senator and the Commissioners who joined him in his dissenting statement pointed out that the nonpublic schools face a fiscal crisis which could lead to their collapse. This is one of the facts that must be dealt with in treating the question of aid to private schools.

The statement adopted by Senator Laverne and his fellow Commissioners relied to a great extent on a report prepared for the Fleischmann Commission itself, the so-called Gary Report, "The Collapse of Nonpublic Education: Rumor or Reality?" I would like to summarize the report's three main conclusions.

The first is that a continual and gradual phaseout of private education is likely in any event, whether or not public funds are made available to the private schools.

The second is that, if there is no significant aid to the nonpublic schools, there will be a precipitous decline in the private schools.

The third conclusion is that, if there is in fact a precipitous closing of private schools, this would be disastrous to the quality of education in the public schools. In New York State more than 700,000 students are in the private schools. The cost of educating students in the public schools is approximately $1,400 per pupil. New York State is now giving approximately $100 per pupil to the private schools through a combination of aid programs. This costs New York State approximately $70 million a year. If the private schools were to close. Approximately a billion dollars would be added to public school costs. This is arrived at by multiplying 700,000 students by the $1,300 difference between what the State is paying now and what it would have to pay.

Mr. **Carey**. Mr. Desmond, at this point the Chair will note that the second bells have sounded for a vote on the conference report on the floor. It will be necessary for us to suspend or to conclude. Now, I think you have given us an extensive record here on the position of the Joint Legislative Committee, as well as the National Legislative Conference.

I would recommend, if it meets with your approval, that you extend the statement, if you wish, by further presentations directed to the committee. I would like to reserve the balance of time then for any questions that may be directed to you.

Do you have anything else that you feel has to be in the record at this point? We should move on, I think.

Mr. **Desmond**. I would like to make one more point.

Mr. **Carey**. Proceed.

Mr. **Desmond**. An argument was made this morning against aid to private schools based on the defeat of the proposed constitution in New York State in 1967. This was presented as evidence of antiprivate aid sentiment on the part of the general population. Senator Laverne phasizes strongly that there were other objections to the constitution besides its repeal of the Blaine amendment. In fact, his own position is that, although he supports aid to private schools, he opposed the passage of the proposed constitution.

Mr. **Conable**. Mr. Desmond, I would like to say I think this is a very specific and helpful statement. I appreciate your bringing it here. I am glad you had the knowledge to be able to pick up what Senator Laverne would have given us had he been able to testify. I think it has been very helpful.

I suspect that the work of the conference is going to be important to us in our deliberations here.

I thank the Chairman.

Mr. **Carey**. Are there further questions of the witness?

Thank you, Mr. Desmond. I join our colleague from New York in stating that our legislative body will be served in terms of capacity as evidenced here today. We appreciate your statement very much, especially your point about the defeat of the constitution. I will recall the accuracy of your statement. There were many other paramount issues, such as welfare programs, that overrode the single issue of aid to private schools.

Mr. **Conable**. The present chairman and I both went through this. So we can interpret that statement also that was made this morning. I think you made a good point on it.

Mr. **Carey**. It is an excellent point.

Thank you, Mr. Desmond.

The committee stands adjourned until 10 a.m. tomorrow. The first witness will be Mr. Biemiller of the AFL-CIO.

(Whereupon, at 2:55 p.m., the committee adjourned, to reconvene at 10 a.m., Wednesday, September 6, 1972.)

TAX CREDITS FOR NONPUBLIC EDUCATION

WEDNESDAY, SEPTEMBER 6, 1972

House of Representatives,
Committee on Ways and Means,
Washington, D.C.

The committee met at 10 a.m., pursuant to notice, in the committee room, Longworth Office Building, Hon. Wilbur D. Mills (chairman of the committee) presiding.

The Chairman. The committee will please be in order.

Our first witness this morning is our former colleague and friend, Andrew J. Biemiller.

We are pleased to have you with us, and you are recognized.

STATEMENT OF ANDREW J. BIEMILLER, DIRECTOR, DEPARTMENT OF LEGISLATION, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS; ACCOMPANIED BY WALTER G. DAVIS, DIRECTOR, DEPARTMENT OF EDUCATION; THOMAS HARRIS, ASSOCIATE COUNSEL; AND RAY DENNISON, LEGISLATIVE REPRESENTATIVE

Mr. Biemiller. Thank you, Mr. Chairman.

I am accompanied by Mr. Walter Davis, director of the Department of Education of the AFL–CIO; Mr. Thomas Harris, our associate general counsel; and Mr. Ray Dennison, one of our legislative representatives.

Mr. Chairman, we are pleased to appear before this committee to express our views concerning H.R. 16141, the Public and Private Education Assistance Act of 1972, introduced by Representative Hugh Carey for himself and Chairman Wilbur Mills.

From the very beginnings of the AFL–CIO, we have frequently appeared before the committees of Congress to testify on legislation designed to provide federal financial support for education.

Moreover, the AFL–CIO has had frequent occasions to express its support of the goals which are the intended aims of this bill. Most recently, at its February 1972 meeting, the AFL–CIO executive council adopted a policy statement on financing education. That statement declared:

> We must begin now to formulate new and more equitable solutions to the critical problems of educational finance.
>
> The general direction which those solutions must take seems to us abundantly clear. The States and the Federal Government must take over a substantially larger share of the costs of education and do it in a way that provides equality of opportunity.

The entire statement of the executive council is so germane to the consideration of this present bill that we are including for the record the complete text as an appendix to this statement.

We are here today to oppose H.R. 16141, the Public and Private Education Assistance Act of 1972.

Before we proceed to explain the basis for our opposition, we feel compelled to observe that one of the most useful things that the Congress and the administration could do to provide assistance to both public and nonpublic education would be to fund existing Federal programs for education at the full limits of their present authorization.

The Elementary and Secondary Education Act has been funded during recent years at less than half of congressional authorization, even though this legislation was carefully designed to deal with both the problems of inequality of educational opportunity and the problems of providing constitutionally sound methods of aiding students in nonpublic schools.

Present ESEA title I legislation has a potential of $7.2 billion authorization. The current appropriation for this program is $1.6 billion, having suffered a cut from the $1.8 billion vetoed by President Nixon.

In this regard, it is significant that in their testimony on behalf of the administration, both Secretary of the Treasury George Shultz and Director, Office of Management and Budget, Caspar Weinberger, argued that Federal expenditures and revenue losses resulting from H.R. 16141 should be made up for by corresponding cuts in appropriations, probably including education.

We have carefully studied H.R. 16141 and the related materials which have been made available by the Committee on Ways and Means. We have concluded that the bill would not bring about the equalization of educational opportunity.

There are two titles in this bill, title I which deals with equalization of educational opportunity in the public schools, and title II which provides tuition tax credit for parents of students in nonpublic elementary and secondary schools.

The summary of the bill prepared by the Ways and Means Committee states that under title I:

> A Public Education Trust Fund would be established out of which a Federal matching payment of 50 percent of State education expenditures would be made.

Since State education expenditures for education in the United States are presently in excess of $16 billion a year, this would mean a Federal outlay of over $8 billion.

The language of the bill, itself, however, is quite different than what is stated in the official summary. Title I, section 103, of the bill states:

> There shall be paid to a State from the trust fund created by section 104 for any entitlement period an amount equal to the sum disbursed out of State funds for such period as public education equalization expenditures.

Contrary to the committee's summary statement, this provision clearly would establish dollar-for-dollar matching grants. However, the matching grants would not apply to all "State education expenditures" as indicated in the summary, but rather to only those State expenditures which could qualify as expenditures for equalization of public education. Passage of the bill would inevitably bring about a quick reorganization of the methods of disbursing State funds and it is impossible to estimate what the 100-percent matching grants would cost the Federal Government. It could involve something like $16 billion a year.

We find it difficult to believe that any State would be so unimaginative that it could not qualify at least half of its educational expenditures under the provisions of this bill. That would mean that the cost of literally fulfilling section 103 would fall somewhere between $8 and $16 billion.

However, there are two important exceptions to the entitlement of a State to "an amount equal to the sum disbursed by such State out of State funds for such period of public education equalization expenditures."

The first exception is that if the entitlements of the states exceed the amount appropriated, the payments shall be reduced proportionally. As we will indicate later, this is a very large exception.

The second exception is that the total payment to a State "may not exceed 10 percent of the total non-Federal funds spent within the State for such period on public elementary and secondary education."

The limitation of Federal support to 10 percent of non-Federal expenditures would be a ceiling applying to every State. It would constitute the upper limit of what the State could expect to receive from the Federal Government, however, much that State spent toward equalization.

Given the incentive of dollar-for-dollar Federal matching grants, every State would undoubtedly adopt equalization programs which would bring them up to the 10-percent level. The 10-percent limitation is therefore the probable expression of what each State's entitlement would be under H.R. 16141.

We are submitting with this statement a chart computed by the AFL-CIO from data of the U.S. Office of Education showing what each State's entitlement would be under the 10-percent limit based upon 1969-70 expenditures. The States which receive the least are Alabama, Mississippi, and Arkansas, all of which would receive a Federal grant of less than $50 per pupil.

The States which would fare the best are Connecticut, Delaware, Illinois, New Jersey, and New York, each of which would receive a grant of over $95 per pupil.

The reason for these wide discrepancies is that under the terms of this legislation, the amount of the Federal grant depends upon the amount which the State and local governments spend. This is a matching grant program and 50-50 matching grants have a way of increasing inequality between States rather than equalizing them. Those States which can afford to spend the most thereby qualify for the largest Federal grants.

In some instances, States which would receive the least aid under this bill, although low in personal income, actually make a proportionately greater effort than some States which, by virtue of greater financial resources, would receive greater Federal aid. In 1969-70, Mississippi, for example, spent 4.97 percent of its total personal income for elementary and secondary education, whereas Illinois spent only 3.52 percent and Connecticut 3.86 percent of their personal income for the schools. Yet, under H.R. 16141 Connecticut and Illinois would receive well over twice as much per pupil as Mississippi.

Title I would increase the degree of educational inequality rather than decrease it as between the several States.

Title I also proposes a principal of equalization within each State which, in our view, is unsatisfactory. Except in those instances in which the State provides 90 percent or more of non-Federal educational expenditures, the only method of equalization within the State which is set forth in the bill is based on assessed valuation of real property within the individual school district.

Assessed valuation has been widely manipulated and seems to us a poor yardstick by which to measure a school district's ability to support its schools.

We believe that there is a strong case instead for using personal income within the school district as a measure of ability to pay.

We have already pointed out that the 10-percent rule places a severe limitation upon the Federal grants seemingly promised in this bill.

A second limitation upon the Federal grants to the States is contained in the provision that if the entitlements of the States exceed the amount appropriated, the payments shall be reduced proportionally. This eventuality is not a possibility; it is a certainty.

If our assumption is correct that every State will manage to qualify for Federal grants to the limit of the 10-percent rule, then there is not enough money authorized in the bill to meet the entitlements of the States.

In 1969–70, State and local expenditures for education totaled approximately $36 billion. On the basis of the 10-percent rule, their total entitlement would, therefore, have been $3.6 billion. But the bill only authorizes $2.25 billion for title I. The difference, prorated over the States, would mean that the actual ceiling on Federal grants to each of the States would not be 10 percent but, rather, 6.3 percent of the State's total State and local expenditure for elementary and secondary schools. And this figure is based upon expenditures for the 1969–70 school year. By the time the bill could become operational, the percentage would be even lower.

In fact, according to the committee estimates, the total State and local expenditures for education reached $45 billion in the 1971–72 school year. Ten percent of this would amount to $4.5 billion a year, exactly twice as much as the $2.25 billion provided in the bill. In other words, this bill provides only enough funds to meet half of even the 10-percent limitation.

This apparently is the basis for statements that the bill provides "50-percent matching grants," despite the clear language of the bill authorizing 100-percent matching grants.

The total effect of the two exceptions in the bill would thus be to reduce the Federal grants to an effective ceiling of only 5 percent of the combined State and local expenditures.

We should add, however, that we question the committee estimate of $45 billion. This figure is reached only be including expenditures for school construction and to include capital outlay funds in a school equalization program would raise a whole new range of difficulties. Current operating expenditures would seem to us a more appropriate basis for developing school equalization plans, and that figure for 1971–72 was approximately $39 billion.

This is a far cry from the promise in section 103(a) of Federal grants matching on a dollar-for-dollar basis State equalization expenditures. It would be a modest State equalization program indeed which did not immediately run into a 5-percent effective limitation upon the Federal grants.

Title II of H.R. 16141 is an effort to provide financial relief for nonpublic schools by allowing parents a tax credit of up to $200 for each child enrolled in a nonpublic, nonprofit elementary or secondary school.

We strongly oppose the income tax credit provisions of title II of the bill. Federal income tax credits under certain circumstances—particularly when used in lieu of deductions—can make the tax structure more equitable and at times can serve as an inducement toward the attainment of a desired national objective.

For example, substituting a tax credit for the personal exemption for dependents would have a salutary effect on the distribution of the Nation's income tax burdens. Similarly, it is our view that substituting a State tax credit for the current method of deducting State income taxes would add an element of justice to the Federal tax structure and serve as an inducement to the States to increase their reliance upon taxes based on ability to pay.

However, the tax credit provision of H.R. 16141, would simply amount to the addition of a new tax loophole. And, of perhaps even greater significance, it establishes an extremely dangerous precedent by providing tax relief to a particular group solely because this group chooses not to use a particular public service.

It has become generally recognized that preferential tax relief is a subsidy—albeit a back door, hidden form of subsidization.

Such subsidies once enacted are removed from the control of Congress; they do not appear in the budget as an expenditure; and because benefits flow to those who do not need them, as well as to those that do, tax dollars are wasted.

The $200 per nonpublic school student credit contained in this bill would:

(1) Be a back-door subsidy to taxpayers who choose to send their children to nonpublic schools, and it would be a subsidy to the schools to the extent that they would seize it as an opportunity to raise tuition fees.

(2) It would violate the prinicpal of equal treatment of equals and of taxation based upon ability to pay in that two similarly situated families would pay differing amounts of Federal income taxes depending on whether or not their children attend nonpublic schools.

(3) It has been argued that those who do not take advantage of public schools should not be required to pay for them. We cannot accept such reasoning. Everyone benefits when a nation invests in education. However, even using the individual benefit principle implied in the nonpublic school tax credit, one can still ask: Why not a credit for the single taxpayers? Why not a credit for childless couples? Or, extending the same logic even further, why not a tax credit for those who choose not to use our national parks? Or for vegetarians, since they derive no direct benefits from federally assisted meat and poultry inspection programs?

The language of title II and the language of the explanatory materials accompanying the bill raise some questions in our mind as to the actual intent regarding the tax credit. The explanatory materials indicate that if the credit entitlement should exceed the individual's tax liability, he would get a rebate.

We understand that it is the view of the committee that a tax credit implies a rebate in the absence of specific language to the contrary. However, we note that our own confusion on this point is shared by the Secretary of the Treasury who raised this same question when he testified on the bill.

In either case, we are opposed to the tax credit principle. If the tax credit were not to be coupled with rebates, then the subsidy would not benefit those of low or modest incomes who pay little or no Federal income taxes nor would it aid the private schools their children attend.

On the other hand, even if the bill does involve rebates, the largest amount of the benefits will still go to families which least need them. The estimates of the Joint Committee on Internal Revenue Taxation as to the cost to the Treasury of title II which are included in the committee materials indicate that less than 30 percent of the benefits of title II would go to families with incomes below $10,000, even with rebates. The rest of the benefits, 70.5 percent, would go to families with incomes of $10,000 a year or more.

With or without rebates, the tuition tax credit proposal raises serious constitutional questions, especially in the light of recent court decisions.

The avowed purpose of title II is to give relief to the hard-pressed parochial schools of this country. These schools need help; they have rendered valuable services to the Nation, and the wish to aid them is wholly understandable.

However, the admitted facts that the proposed tax credits have as their objective and would unquestionably operate to help parochial schools financially, raise difficult questions as to the constitutional validity of the credits under the first amendment.

While none of the cases reaching the Supreme Court has involved tax credits or, for that matter, other forms of direct subsidies to parents, the Supreme Court's approach in such cases as *Earley* v. *Di Censo*, 403 U.S. 402 (1971) suggests the strong likelihood that the tax credits would not survive Court scrutiny.

We would also note the case of *Swart* v. *South Burlington Town School District*, 122 Vt. 177, 167 A. 2d 514 (1961), in which certiorari was denied (366 U.S. 925), holding tuition grants for parochial school attendance to be violative of the first amendment.

It is true that persons seeking to challenge the credits would encounter certain procedural barriers, such as the question of their standing to sue, but Supreme Court decisions in recent years have substantially eroded such obstacles. See *Flast* v. *Cohen*, 392 U.S. 83 (1968); *Green* v. *Connally*, 330 F. Supp. 1150 (D.C., D.C. 1971), affirmed per curiam, 30 L. Ed. d. 550 (1971).

These very real doubts as to the constitutional validity of the proposed program should weigh heavily against its adoption.

Beyond the obvious issues of Federal aid to church-related institutions, there is another serious question.

Given the persistent efforts by some States to subsidize tuition payments to racially segregated schools, we find it altogether incredible that there is no guarantee against segregated education in title II.

It is true that section 106(a) forbids discrimination on grounds of race, color, national origin, or sex, but the fact that this provision applies only to title I constitutes a virtual invitation to segregationists to avail themselves of the tax benefits provided by title II.

Given the clear intent of title, II, we are puzzled at the committee's estimate that it would result in a maximum revenue loss of only $584 million. Assuming the rebate principle, we find it inconceivable that any nonpublic school would fail to set its tuition at a minimum of $200.

The U.S. Treasury, after all, would be providing parents with the funds to pay.

Now, in 1970, there were over 5 million pupils enrolled in nonpublic schools. Given the rebate principle, the drain on the Treasury would likely amount to in excess of $1 billion rather than the $584 million estimated in the committee materials. In fact, the estimate by Treasury Secretary Shultz of $970 million loss is very close to ours.

The money involved, of course, would not be controlled either by congressional authorization or by congressional appropriation. It is in fact a remarkable feature of this bill that it would establish a multibillion-dollar Federal program which would completely short-circuit the normal appropriations process, title I doing so by the trust fund mechanism and title II by the open-ended tax credit mechanism.

We find, therefore, that we cannot support either of the titles in H.R. 16141.

The AFL-CIO, however, is deeply committed to the principle of equal opportunity in education throughout the Nation. H.R. 16141 would make the size of Federal grants dependent upon how much a State spends. The bill would give more to the wealthy and less to the poor. This would increase the inequality which the bill is intended to correct. We would propose turning that upside down.

In our view, Federal grants should be based on the financial needs of the State to maintain acceptable national standards of educational opportunity. This principle has been broadly accepted in elementary and secondary education legislation previously passed by the Congress.

We would further suggest to this committee that for both State and Federal equalization programs personal income is a more dependable measure of financial ability than assessed valuation of real property.

The AFL-CIO has recently published a pamphlet, Financing the Schools, which sets forth this kind of an approach to educational equality in considerable detail. We are submitting a copy of it with this statement, not as a final blueprint, but, rather, as an alternative approach to our common goal of guaranteeing equality of educational opportunity throughout our Nation.

The CHAIRMAN. Without objection, the additional pamphlet referred to by Mr. Biemiller will be made a part of the record at this point.

(The pamphlet and additional matter attached to Mr. Biemiller's statement follow:)

FINANCING
THE
SCHOOLS
AN AFL-CIO VIEW

"The American Federation of Labor favors the greatest liberality by the United States and state Governments to further and advance the cause of the education of the masses."

Ninth Convention of the
American Federation of Labor, 1889.

"We recommend that education from pre-kindergarten education, through elementary, secondary and higher education, to programs of adult education available throughout life be given high funding priorities, especially at the state and federal levels.

"We recommend the full funding of existing federal programs in education and we recommend expansion of these programs to bring federal support for education up to the level of one-third of the nation's total educational expenditure."

Ninth Convention of the
American Federation of Labor and
Congress of Industrial Organizations, 1971.

Financing the Schools

AN AFL-CIO VIEW

Education, from pre-kindergarten classes through higher education, has become the largest single public activity in America with the possible exception of national defense. The nation spends more than $60 billion a year—nearly 8 per cent of its gross national product—on its public schools. More than 5 million people are employed in the schools and over 60 million attend them. All in all approximately one out of every three people in the United States is actively engaged one way or another in the teaching-learning process.

Organized workers have played a major role in the birth and growth of the public school system. The Workingmen's Party in 1829 called for a school system "that shall unite under the same roof the children of the poor man and the rich, the widow's charge and the orphan, where the road to distinction shall be superior industry, virtue and acquirement without reference to descent." The organized workers provided education leaders like Horace Mann and Henry Barnard the mass support which they needed in order to bring the public school system into being.

Over the intervening years organized labor has never wavered in its support for the schools. Workers have a direct consumer interest in education. They pay the taxes that support the schools and their children attend those schools. They have an individual and collective interest in guaranteeing that quality education be universally available.

Vast as are the resources channeled into education, it is nevertheless the firm belief of the AFL-CIO that these resources are insufficient and that they are not and never have been distributed equally or equitably.

Nationally, the United States consists of 50 states which are altogether unequal in their financial resources and in their educational expenditures. In the 1971-1972 school year, average per pupil expenditures ranged from a high of $1,468 in New York State to a low of $543 in Alabama, with a national average of $929.

Not only is this inequality a fact of American education; the inequality has been widening rather than narrowing over the years. If one compares the average per pupil expenditure in the five highest states with that of the five lowest states, the difference was $238 in 1957-1958 school year, $322 in 1962-1963 and $697 in 1971-1972. Equality is farther from reality today than it was 15 years ago.

But it is not only between one state and another that there is gross inequality of educational expenditure. The inequalities within the individual school districts of New York State, for example, ranged in 1969-1970 from a high of $1,889 to a low of $669; in California from a high of $2,414 to a low of $569; and in Illinois from a high of $2,295 to a low of $391. In Maine the highest funded school district spent 579 per cent more per pupil than the lowest funded district and in Missouri the highest spent 698 per cent more than the lowest.

Large-city school districts, with large concentrations of minorities and of economically disadvantaged children, tend to spend less on their schools than the suburbs and small towns around them. Finances of Large-City School Systems, a recent Office of Education study of school revenue and expenditures for the 1967-1968 school year, provides startling evidence of this. Per pupil expenditure in Jersey City, for example, was $672 as compared to the average per pupil expenditure in the state of New Jersey of $783. Omaha spent $443 per pupil compared to the average for the state of Nebraska of $532. San Antonio spent $437 compared to $523 average for the state of Texas.

Among other cities in which the average per pupil expenditure was below the average for the state were Birmingham, Los Angeles, San Diego, Indianapolis, Albuquerque, Buffalo, and Milwaukee. All of these are cities with deep educational problems which require greater than average rather than less resources.

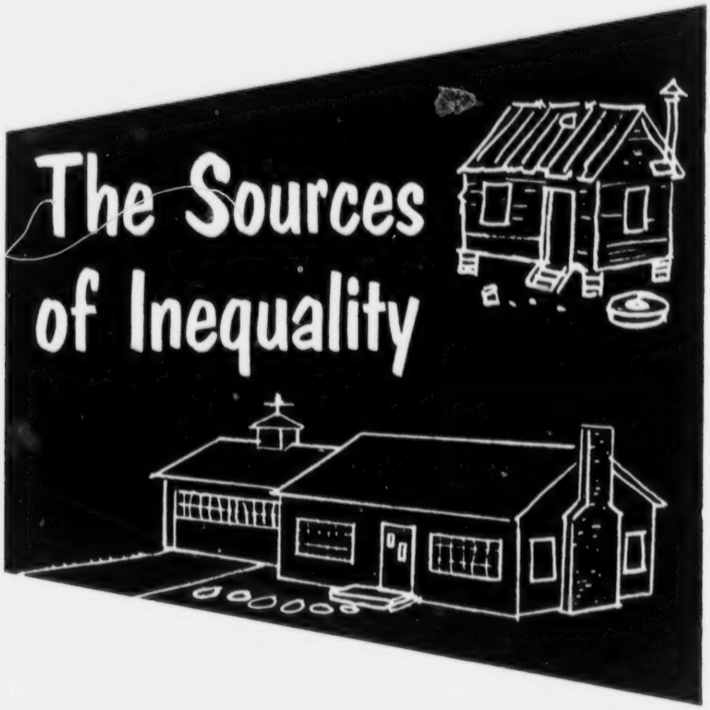
Surprisingly enough, according to this same study, the large-city school districts received less than other school districts under most state support programs. Los Angeles, for example, with an enrollment which constituted 14.73 per cent of the total school enrollment in the state of California, received only 10.39 per cent of the state's funding for the schools. If Los Angeles were to have received state funds in proportion to its percentage of enrolled students, the city would have received approximately $60,000,000 in additional state funds. This would amount to about an extra $132 per pupil.

Los Angeles is by no means an exception. Denver's schools enrolled 18.32 per cent of the students in the state of Colorado, but the city received only 10.96 per cent of the state's education funds. Hartford had 4.32 per cent of Connecticut's students but received only .67 per cent of the state's funds. Detroit with 14.23 per cent of Michigan's students received only 11.42 per cent of the state's school support funds. Minneapolis with 8.14 per cent of the students in Minnesota received only 4 per cent of the state's funds. New York City with 31.16 per cent of the students enrolled in the state received only 21.58 per cent of the state's support funds. The list could be extended indefinitely, but the point is clear: large-city school systems with unusually heavy financial needs and shrinking tax bases are generally shortchanged by state support formulas.

There is yet a third kind of inequality of educational opportunity and that is the flagrant inequality which frequently exists even within a single school district. This kind of inequality was devastatingly analyzed by Patricia Sexton in her book, Education and Income, in which she studied in depth the schools of a large urban district. She found that the higher the income level of the parents served by a school, the more likely the school was to have school libraries, special reading teachers, audio-visual equipment and other service and facilities needed by economically disadvantaged children above all.

Further support for Dr. Sexton's findings were contained in Judge Skelley Wright's decision in the landmark case of Hobson v. Hansen. After examining the evidence that per pupil expenditures varied as much as $132 from one Washington, D.C. elementary school to another, Judge Wright concluded, "The defendents' own evidence verifies that the comparative per pupil figures do refer to actual educational advantages in the high-cost schools."

It is fashionable among critics of the schools to say that just spending more money will not solve our educational problems. No one ever supposed that it would and those who delight in repeating the statement are simply beating a straw man. However, it is equally apparent that many of America's deep education problems will not be solved without spending more money. And it is also apparent that there is some qualitative difference between a school which spends $1,500 per pupil and one which spends $300 per pupil.



The Sources of Inequality

There are a number of factors which have combined to create a situation in which educational opportunity depends to such a considerable extent upon where a pupil happens to live.

To begin with, the largest single source of financial support for the public schools comes from within the local school district, 53 per cent as the national average. Here too, the situation varies widely from one state to another. In Hawaii the state assumes the complete responsibility for financing the schools except for the funds provided by the federal government. Among the remaining states, local districts in Nebraska and South Dakota pay the highest share of school costs, 75 per cent and at the other extreme local school districts in Alabama and Delaware pay only 20.5 per cent and 22 per cent respectively.

Local school revenue is raised primarily through property taxes. Since property values have wide variations among districts, local revenue capacity also varies widely. According to Alternative Programs for Financing Education, the report of the National Educational Finance Project, funded by the United States Office of Education. "The range in market value of property per pupil in states with large school districts such as Florida might be as great as 10 to 1. In states with a large number of districts, many of which are small, the range in wealth per pupil is typically 50 to1."

The California State Supreme Court in the Serrano v. Priest case noted that in that state assessed valuation per unit of average daily attendance of elementary school children ranged from a low in one district of $103 to a peak in another district of $952,156—a ratio of nearly 1 to 10,000.

The lowest tax bases tend to be in the large cities which have suffered a serious erosion of their revenue raising capacity as affluent families and service industries have both moved to the suburbs. This leaves the cities with growing financial burdens that compete with the schools for what revenue is available. The United States Commission on Civil Rights in its report Racial Isolation in the Public Schools notes that 20.9 per cent of large city revenues go to welfare and fire and police protection as compared to only 13.2 per cent in suburban communities. On the other hand, 31.3 per cent of the public expenditures in large cities go to education as compared to 53.8 per cent in the suburbs.

Adding to the erosion of tax resources available for the schools has been the success which business and industry have experienced in reducing their share of state and local tax burdens. Figures compiled by the Advisory Commission on Inter-Governmental Relations show that in 1957, business taxes accounted for 34.2 per cent of total state and local tax revenues. By 1967, the business community had reduced its share to 29.3 per cent. If the business community had continued to maintain its relative share, the financially pressed state and local governments would have had another $4.5 billion in 1967 tax revenue.

School districts with large concentrations of minority children, low income families, and otherwise disadvantaged students have a complex of education financial problems which are essentially beyond their capacity to solve. They have severe educational needs which can only be met by unusually high levels of funding; they have an eroded tax base which means that even with heroic effort they cannot match the revenue raised by their more affluent neighbors, and they have more urgent municipal needs competing with the schools for what tax dollars are available.

The Role of the States in School Finance

The second largest part of the financial support for the schools comes from state governments. In this, however, as in most things, practice varies considerably from state to state. In New Hampshire only 5.3 per cent of school revenue comes from the state, whereas Hawaii provides 88.7 per cent of the school revenue in that state, the federal government providing the remainder. In Nebraska, South Dakota and Oregon the states provide less than 20 per cent of the school revenue; in Alaska, Maryland, Arkansas, North Carolina, and New Mexico the states provide more than 60 per cent.

State support programs also vary considerably in the extent to which they are badly or well designed. Some states such as Arizona and Connecticut provide flat grants to school districts based upon pupil enrollment. Such a program obviously does little to compensate for the unequal resources which exist between individual school districts.

Some states in the past have even used matching grant formulas in distributing funds to local school districts, thus aggravating the inequality and often resulting in much higher per pupil grants to wealthy school districts than to poor ones. Matching grants have by now been virtually abandoned, but the flat grant system is only a meager step forward.

Other states use variations of equalization plans, which in one way or another take the local school district's taxable wealth into account in allocating state funds. The best of these plans also take into account varying education financing needs arising from such factors as large concentrations of educationally disadvantaged students and the higher costs of secondary and vocational schools.

If the states vary in the degree of equity with which they distribute funds, few of them rate at all well in the degree of equity with which they raise those funds. By far the largest part of state education funds comes from the sales tax, a highly regressive tax.

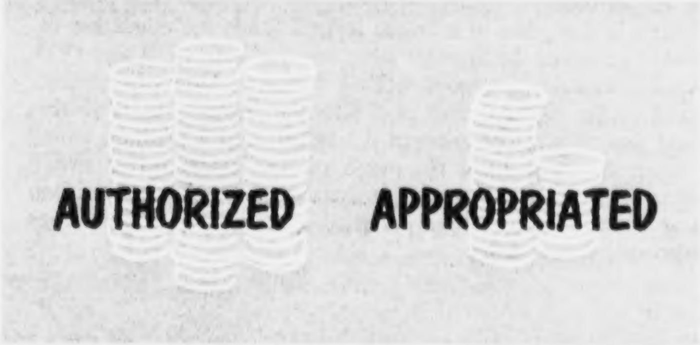
The National Educational Finance Project ranked the 50 states tax revenue structures on a numerical scale of progressivity in which the federal income tax was arbitrarily assigned a rating of 50. Nevada ranked lowest with a progressivity rating of 14.8. Only five states rated 25 or over, with Oregon topping the list at 26.7.

It is therefore apparent that the equalizing effect of even well designed state support plans can be at least in part negated by inequitably designed tax structures.

from
NEW
HAMPSHIRE 5.3%

to
HAWAII 88.7%

The Federal Role



At the very same time that educational costs have been rising sharply and that local and state tax crises have intensified, the federal government has been curtailing its commitments to share in the financing of education. Congress, in writing educational legislation, has carefully evaluated needs and translated those needs into levels of funding authorized for the various federal programs. However, the actual money available to the schools depends not upon the authorizations, but rather on the separate appropriations bills adopted each year. The actual appropriations have consistently lagged behind the authorizations.

President Lyndon Johnson will unquestionably be best remembered in history for his ability to break through the century-old deadlocks which had frustrated efforts to legislate federal aid to education. But he did not always follow through on the legislative victories which he had contributed so much toward winning. He did not seek federal funding for education at the level of full congressional authorization, a matter consistently pointed out by the AFL-CIO.

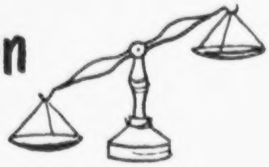
Under the Nixon Administration the gap between legislative authorization and funding widened further. Appropriations for 1966 under the Elementary and Secondary Education Act constituted 96 per cent of the amount authorized under the legislation. For 1969 and 1970 appropriations were only 45 per cent of authorization, and for 1971 they were 48 per cent, a slight increase forced by Congress on a reluctant Administration.

Vocational education has suffered a similar fate. Appropriations for 1966 under the Vocational Education Act constituted 91 per cent of full authorization. For 1969 appropriations were 52 per cent, for 1970 they were only 45 per cent and for 1971 they were 46 per cent.

Efforts in Congress to increase federal funds for education resulted in vetoes of the appropriation bills for both 1970 and 1971.

An Administration appointed Task Force on Urban Education, chaired by Dr. Wilson Riles of California, reported in 1969 that federal expenditures of between $5 billion and $7 billion would be required just to meet the needs of the largest urban school systems. The report was totally unheeded, yet today most urban educators would undoubtedly regard the funding proposals as dangerously conservative.

The Changing Law on Educational Equality



In the early years of America there was little pretense of equal educational opportunity. Those who could afford to do so sent their children to private schools. Such public schools as there were limited their enrollment to the children of the poor. The "pauper children" in public schools were taught reading and writing, and the "pay scholars" in the private schools were taught such additional subjects as geography and Latin.

Black children were excluded generally from both the public and private schools and what educational programs were available to them consisted of essentially missionary ventures conducted by various church groups. In 1805, Thomas Jefferson became the first president of the Washington, D.C. school board. It was not until 60 years later that the first public facilities for the education of black children were established in the capital city of the United States.

In most southern states, as a matter of fact, as an aftermath of the 1831 slave rebellion led by Nat Turner, laws were passed making it a crime to educate blacks. During the years following the Civil War, the education of black children became a hit or miss affair.

A major turning point in the development of legal concepts in equality of educational opportunity came when the Supreme Court in 1896 in the case of Plessy v. Ferguson ruled in favor of "separate but equal" accommodations. Although the case itself had to do with accommodations on a railroad train, the implications of the decision spread widely and in education gave sanction to the dual school systems established in many states. Although the Plessy v. Ferguson decision sanctioned segregated schools, it also established a constitutional mandate requiring the states to provide equality of educational opportunity.

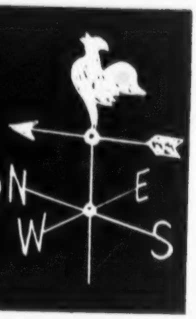
In actual practice separation became a far greater reality than equality. During the 1953-1954 school year, for example, in Mississippi the average per pupil expenditure for white children was $98.15, but for black children it was only $43.17. Louisiana, in the same year, spent $165 per white student and $122 per black student. The District of Columbia spent $240 per white student compared to $186 per black student.

This was the situation at the time the United States Supreme Court ruled in 1954 that school segregation was unconstitutional because "separate educational facilities are inherently unequal." In view of some of the recent emotionalism concerning "school busing" it is ironic that one of the cases which was decided by the Supreme Court ruling began when a group of black parents in Clarenden County, South Carolina, went to federal court demanding that their children be provided the same school bus service as was available to the children of white parents. Federal Judge J. Waties Waring who heard the case suggested to the parents that they should rather sue for the abolition of the dual school system, which they subsequently did.

Finally, a series of court decisions in such states as California, Texas, Minnesota, and New Jersey have declared that the methods of public school financing which have existed in these states violate the equal protection clause of the Fourteenth Amendment. In the words of the California State Supreme Court in the Serrano v. Priest case, "This funding scheme invidiously discriminates against the poor because it makes the quality of a child's education a function of the wealth of his parents and neighbors."

The schools have long existed in a state of financial crisis, but these court decisions have forced the situation into the open. What has long been right is now rapidly becoming legally necessary.

Where do We Go From Here?



The AFL-CIO Executive Council responded to the court decisions with a policy statement saying, "We welcome the court decisions which are jolting the states and the federal government into facing up to the need for equitable answers to the problems of the public schools."

The Executive Council further said, "We must begin now to formulate new and more equitable solutions to the critical problems of educational finance.

"The general direction which those solutions must take seems to us abundantly clear. The states and the federal government must take over a substantially larger share of the costs of education and do it in a way that provides equality of opportunity."

The court decisions have in fact been a confirmation of the position taken by the 1962 convention of the AFL-CIO which had declared: "There are inequalities which are beyond the corrective power of state and local governments . . . State and local tax systems based largely upon the sales tax and property tax, are regressive, falling hardest on the low-income groups who can least afford to pay . . . But even if all of the state and local taxes in the nation could somehow be made progressive, the total effect through the nation would still be regressive so long as education continued to be financed entirely by state and local governments."

It was perhaps inevitable that the critical problems in education should give rise to countless panaceas, all promising cheap and easy solutions to the problems of the schools.

One of the most highly touted of these panaceas has been performance contracting under which school systems contract out a portion of their curriculum, usually reading and mathematics, to a private firm with the stipulation that payment will depend upon the number of students who reach predetermined goals. The

United States Office of Economic Opportunity launched a number of these contracts and others were funded by the United States Office of Education and by local school districts.

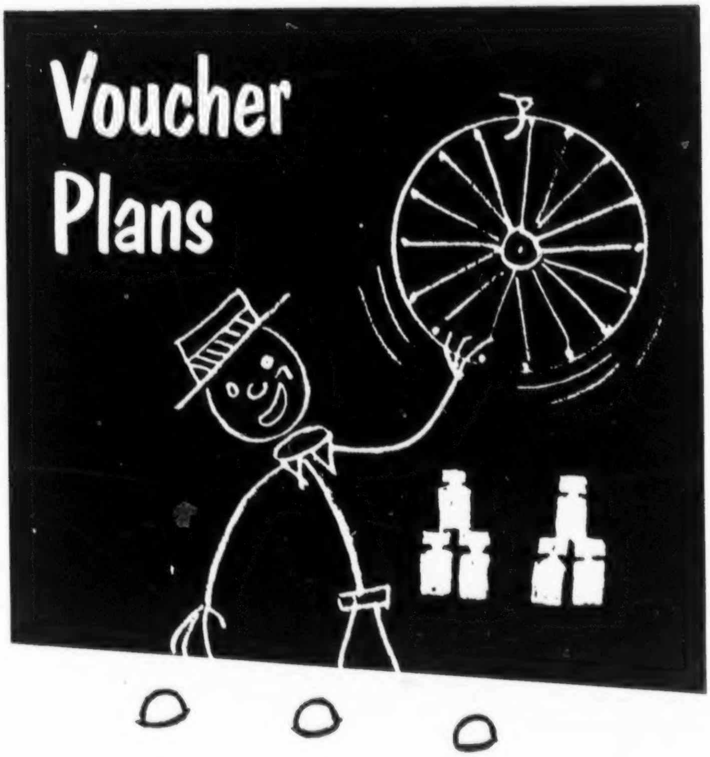
When first proposed, performance contracting was denounced by the AFL-CIO as "educational huckstering." The criticism has proved well-founded. In at least two of the best known performance contracts—one in Texarkana, Arkansas, and one in Providence, Rhode Island.—it was proved that the contractors had attempted to increase their profits by "teaching to the test," that is, by drilling students in advance on the answers to standardized test questions which would determine the contractors' earnings.

In February 1972, the Office of Economic Opportunity held a press conference at which its officials confessed that their experiments in performance contracting had been failures. They were more expensive than regular school programs and they had no discernible effect upon student learning.

One of the most widely publicized performance contracts has been that in Gary, Indiana, where Behavioural Research Laboratories has contracted to operate the entire instructional program at Banneker Elementary School. The program has been widely heralded for its success in improving learning while saving the school system money. The facts are quite the opposite. Out of 149 sixth graders—the only pupils actually covered by the guarantee—only 33 were performing at sixth grade level in reading and mathematics at the end of the first year. Of these, 13 were already performing at sixth grade level in both subjects at the beginning of the school year. Surely, this is something less than an educational miracle.

As to the cost of the Gary program, Behavioural Research Laboratories received a payment of $830 per pupil, $65 more than was spent in other Gary elementary schools. Under the terms of the contract, even if no student in the entire school had performed up to the level of the contract guarantee, BRL would still have received a payment amounting to approximately $20 more per pupil than the average for the other Gary elementary schools.

Reed Martin and Peter Briggs, who were personally involved in the design and implementation of more than half of the existing performance contract experiments, concluded pessimistically in an article in Educational Turnkey News: "No significant new approaches have been offered by the firms . . . The public may find in the majority of cases it is simply paying a higher price for a company to put last year's product in this year's favorite package."



An even more drastic departure from public control of education is the voucher plan which has been promoted through the Office of Economic Opportunity. A limited voucher plan has been partially funded by OEO in Alum Rock, California.

Under the voucher plan, there would be no public funds directly available to the public schools; instead parents would receive education vouchers which they would use to enroll their children in any public school, church-related school, or free enterprise private school. The schools would then submit the vouchers to obtain reimbursement.

Although the voucher plan has been proposed as a way of improving educational opportunity for children from low-income families, it would solve no old problems but would only bring new chaos. The public schools, already harassed by financial problems, would be plunged into a situation in which advanced budgeting would become completely impossible. No school would know how much money to plan on until enrollment day. Teachers would have to be hired and supplies purchased purely on the basis of guesswork, with no assurance that there would be either the money to pay for them or that there would be enough of them to meet the actual need.

Hardsell hucksters could promote their private educational ventures with a reckless disregard for facts. Alleged religious sponsorship could become the excuse for increasing numbers of racially segregated schools. Costly and tragic damage could be done to public schools unable to compete with the glittering promises of private enterprise educational salesmen, greedy for a lion's share of vouchers.

Much of the public support for the voucher plan has come from parents of children in church-related schools who are under the impression that there is something in the voucher plan which will help to ease the substantial financial burden which those schools face. Actually, the voucher plan holds no promise of helping them. The crisis in education, both public and non-public, is immediate and it is nationwide. Nothing in the voucher plan is addressed to this crisis. What is being proposed is a 5-year trial demonstration of the voucher plan for a few thousand students in a small handful of communities. Even if the trial demonstrations were to produce useful information, it would be at least 10 years before that information could be put to general use. The voucher plan is simply another device calculated to delay the day when the federal government measures up to its full responsibility in the field of education.

New support for the voucher plan came from the President's Commission on School Finance which recommended the use of federal funds for "experiments with voucher systems." The AFL-CIO regards experiments with the voucher plan potentially dangerous in their consequences and believes that there can be no justification for undertaking them.

Educational Block Grants

Another plan for dealing with school finance was put forward by President Nixon in his 1972 budget message. He proposed to dismantle the Elementary and Secondary Education Act, the Vocational Education Act, the federally impacted aid program, the education of the handicapped programs, and the school lunch program. He further proposed drawing together "this wide array of overlapping and contradictory authorizations into a new special revenue sharing program for elementary and secondary education."

Mr. Nixon proposed to fund this educational block grant program at three billion dollars for its first year. This was less than Congress had authorized just for the Elementary and Secondary Education Act.

Categorical aid consists of federal grants to state and local authorities for specific purposes spelled out by Congress in the legislation. Funds for school lunch programs, for example, can be used only for school lunch programs and nothing else. Under a block grant plan, a local school board would be able to transfer the funds which it had been receiving for school lunches to its textbook funds.

Categorical aid programs did not happen simply by accident. They came about as a part of a creative solution to specific problems.

Congress has adopted categorical aid programs as a reaction to certain specific educational needs for the very reason that, important though they are, they have in the past been largely neglected by state and local authorities. It is the assumption of all block grant proposals that state and local authorities are better able to establish priorities for spending available funds according to needs than is the federal government.

There is abundant evidence that this is not always true. State and local authorities inevitably make decisions in terms of the various social and political pressures around them and these pressures are not necessarily consonant with the needs. A conspicuous example of this is the deplorable state of affairs which existed with regard to vocational education in most school systems prior to the enactment of the Vocational Education Act of 1963. The parents of college-bound students obviously carried more weight with school authorities than did the parents of vocational students. In writing the Vocational Education Act, Congress was thereby in a sense helping to correct this imbalance.

In drafting Title I of the Elementary and Secondary Education Act, Congress reacted to the mounting evidence that in most school systems there was no meaningful equality of educational opportunity between schools serving economically disadvantaged children and those serving children of the middle and upper class. School boards had tended to be most responsive to the influence of the more affluent parents. Congress responded by directing that Title I ESEA funds be used exclusively to meet the educational needs of economically disadvantaged children.

A similar situation has given rise to federal programs to aid in the education of the handicapped. Handicapped children have serious needs for special educational programs, but these needs had been largely neglected because their parents constitute a small minority in the community. Their appeals to school officials for help had been drowned out by the understandable concern of the large majority of parents of non-handicapped children that what funds were available be used to improve the schooling of their own children. Again Congress helped to restore a kind of balance by granting funds which could only be used to aid the education of handicapped children.

A second reason that categorical aid programs have been established is that the national interest in a specific educational problem may transcend local interests. The National Defense Education Act, for example, was adopted in considerable part because it was more important to the nation to have an increased number of scientists and technicians than it was to individual school districts. As a nation we have a concern which is greater than that of localities that there be more doctors and nurses. Categorical aid programs have been one of the ways in which this national interest has been expressed and supported.

It is undoubtedly true that among existing categorical aid programs there is some overlapping and duplication of effort. The AFL-CIO would welcome efforts to examine these programs with the aim of bringing about useful consolidation. But to do away with the categorical programs altogether and put the money into block grants to the states would be a step backward rather than a step forward. It would provide no additional federal funds and it would place those funds which are presently available where the political pressures are greatest rather than where the need is greatest. It could destroy what progress we have made up to now.

Full State Funding

The widespread crisis in local school finances has aroused the attention even of those who have always sought to minimize the federal role in education. One of the solutions most popular with them is for the states to take over the full financing of elementary and secondary education. This is the main conclusion of the report of the President's Commission on School Finance issued in March 1972. The report was less an attempt to solve the problems of school finance than it was an elaborate rationalization for federal inaction in the field of education. The report supports full state funding with a minimal federal participation. A dissenting opinion written by commission member John Fischer, president of Columbia University Teachers College, called for greatly increased federal support. It is significant that the dissenting opinion was signed by eight other members of the commission, all of them educators. This means that the most important recommendation in the report of the 18-member commission was adopted by a 9-to-9 vote. The commission issued exactly the kind of report which it was established to prepare.

Undoubtedly, full state funding would be a considerable improvement over local funding. It could eliminate the gross inequality of educational opportunity existing between various school districts within a given state. Inasmuch as the court decisions on school finances up until now have dealt only with specific financing plans within individual states, full state funding could satisfy these court decisions.

But if it is unjust for the children of Watts to have more limited educational opportunities than are available to the children of Beverly Hills, then it is equally unjust for the children of Appalachia to have more limited educational opportunities than the children of California. Full state funding of the schools deals with the first of these but it totally evades the second.

Just as communities vary in their revenue raising capacity, so do the states. Average per capita personal income varies within the states from a low of $2,561 in Mississippi to a high of $4,807 in Connecticut. In six of the states the average per capita income is below $3,000 and in seven states it is over $4,500.

The problem is further compounded by the fact that the states vary in the ratio between their school-age population and their adult population. North Dakota, for example, with an average per capita personal income of $2,937, has 61 school-age children for every 100 adults between the ages of 21-64. Connecticut, on the other hand, with an average per capita income of $4,807, has only 49 school-age children for every 100 adults. This means that North Dakota has more children to educate and far more meager resources with which to do it. The personal income per enrolled school child in North Dakota is only $14,305, whereas in Connecticut the average personal income per enrolled child is $21,989. There is nothing in full state funding of the schools that in any way compensates for such gross inequalities as this.

The AFL-CIO has long insisted that the states should assume a greater role in financing education, but full state funding as a total answer is no more designed to meet the total problem of school finance than other panaceas such as the voucher plan and performance contracting.

How Can We Finance Our Schools?

$$\frac{1}{1.5} = \frac{\$1,000}{\$1,500}$$

Organized labor is committed to the principle of equal opportunity in education throughout the nation. This goal will require a joint effort of the states and the federal government. Existing federal legislation and the various court decisions have established a foundation from which we can build an equitable system of educational finance.

What is suggested here in no way constitutes "an AFL-CIO plan" for school finance. It is simply put forth as the kind of thinking that must go into solving the present problem.

It is clear that the primary responsibility for establishing equality of educational opportunity within each state must rest with the state government rather than with local governments. The willingness of the state to accomplish this should be a prerequisite for the federal financial support which alone can accomplish equalization between the states.

It is also clear that equality of opportunity cannot be insured simply by equalizing per pupil expenditures throughout the nation. Secondary education is more expensive than elementary education and vocational education is more expensive than other forms of secondary education. Education of the handicapped is particularly expensive, and national policy recognizes that educationally deprived students need compensatory educational programs that require substantial additional funding.

What is needed, therefore, is a basic dollar foundation for each pupil, supplemented by additional funds to meet special needs over and above that amount.

By way of illustration, the federal government could establish a basic foundation formula of $1,000 per pupil. The figure, it should be emphasized, is merely an illustration and not an actual proposal. In-depth analysis might show the figure to be too high or too low. But it is a convenient point of departure.

The federal government might then establish a minimum standard of state support, based, for example, on the per pupil expenditure which would be available to the state on the basis of tax revenues equal to 4 per cent of total personal income in that state. The federal government would then provide an equalization grant equal to the difference between that amount and $1,000 per pupil.

By way of illustration, a hypothetical state might have an average daily attendance of 1,000,000 pupils. Four per cent of the state's total personal income would yield $800,000,000, the equivalent to $800 per pupil. The state would thereby be entitled to $200 per pupil in federal equalization grants, a total of $200,000,000, thus bringing the total basic per pupil expenditure in the state up to $1,000.

Nationally, 4 per cent of total personal income would yield $29.6 billion. An expenditure of $1,000 per pupil would require $45.1 billion. The $1,000 foundation program would thus require federal grants to the states totaling $15.5 billion, an average of approximately $290 per pupil.

These funds would be available to the states in equalization grants, conditional upon the state's satisfactorily establishing that on its own it had raised school revenue equal to 4 per cent of its total personal income and that it had distributed this revenue to school districts within the state on an equitable basis. The state and federal funds together could presumably be distributed by the state in a way that would take account of the cost differential between elementary and secondary education, by a ratio, for example of 1:1.3.

There remains the question of what to do about various high cost special educational needs. These include principally vocational education, education of the physically and mentally handicapped, bilingual education, and compensatory education for the economically disadvantaged and for racially isolated schools.

State capacity would in almost all cases have been exhausted in meeting the $1,000 per pupil base. It would remain then for the federal government to meet the additional expenses of these high cost programs. Again, a ratio type formula could be used. In the case of compensatory education, for example, the ratio might be set at 1:1.5, except that in this case the ratio would start from the $1,000 base figure, thus working out to $\frac{1}{1.5} = \frac{\$1,000}{\$1,500}$ Since $1,000 of the required amount is already covered by state revenue and by the federal equalization grant, the additional federal funds required would be $500 times the number of qualified children in the state. Similar ratios would presumably be worked out for the other categories of special need.

Fulfilling this part of the program would not involve the need for any new federal programs. These special grants could in most cases be covered by full funding of expenditures already authorized under existing federal legislation. The funds for compensatory education are now available under Title I of the Elementary and Secondary Education Act and under the Emergency School Aid Act. The extra funds required for vocational education are provided in authorizations under the Vocational Education Act. Other titles of the Elementary and Secondary Education Act authorize funds for bilingual education and education of the handicapped. As was pointed out earlier, the main problem with these programs is that the actual funds appropriated have generally been only a fraction of the amount authorized by Congress when it wrote the legislation. These special grants to deal with special problems need no new legislation. The necessary legislation has already been adopted. In some instances it might prove to be the case that existing authorizations are insufficient to meet the requirements of realistic ratios, and if so, all that would be required would be to amend the authorization clauses of existing legislation.

The local role, then, would be to set policy relating to such matters as curriculum, allocation of the available resources within the school programs, employment policies, and similar matters. The state role would be to raise revenue equal to 4 per cent of the total personal income within the state and to equitably distribute the available federal and state funds to the local school districts. The federal role would be to provide equalization grants needed to make up the difference between 4 per cent of the states' personal income and $1,000 per pupil, and to also provide additional grants to finance essential high cost programs that cannot realistically be covered by an expenditure of $1,000 per pupil.

This model illustrates the kind of cooperative federal-state local effort the AFL-CIO believes necessary to save public education from destruction.

FEDERAL GRANT TO EACH STATE BASED ON FOUNDATION PROGRAM OF $1000 PER PUPIL WITH A STATE CONTRIBUTION EQUAL TO FOUR PERCENT OF TOTAL PERSONAL INCOME.

STATE	ENROLLMENT*	ENROLLMENT* X $1000	4% OF PERSONAL INCOME	FEDERAL GRANT
	in 1000's	in millions		
Alabama	820	$ 820	$ 365	$ 455
Alaska	77	77	50	27
Arizona	417	417	228	189
Arkansas	436	436	199	235
California	4,925	4,925	3,336	1,589
Colorado	534	534	303	231
Connecticut	640	640	551	89
Delaware	129	129	89	40
Florida	1,408	1,408	896	512
Georgia	1,098	1,098	570	528
Hawaii	179	179	122	57
Idaho	185	185	85	100
Illinois	2,232	2,232	1,894	338
Indiana	1,274	1,274	755	519
Iowa	654	654	395	259
Kansas	496	496	324	172
Kentucky	692	692	368	324
Louisiana	843	843	417	426
Maine	239	239	119	120
Maryland	884	884	613	271
Massachusetts	1,132	1,132	909	223
Michigan	2,141	2,141	1,400	741
Minnesota	913	913	538	375

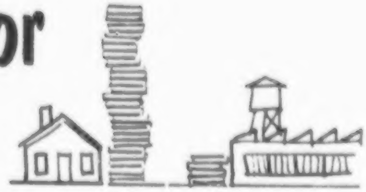
Mississippi	559	559	209	350
Missouri	976	976	643	333
Montana	173	173	87	86
Nebraska	329	329	209	120
Nevada	122	122	81	41
New Hampshire	149	149	100	49
New Jersey	1,449	1,449	1,212	237
New Mexico	276	276	115	161
New York	3,449	3,449	3,255	194
North Carolina	1,171	1,171	601	570
North Dakota	147	147	74	73
Ohio	2,399	2,399	1,606	793
Oklahoma	606	606	313	293
Oregon	467	467	290	177
Pennsylvania	2,320	2,320	1,727	593
Rhode Island	178	178	141	37
South Carolina	640	640	281	359
South Dakota	165	165	80	85
Tennessee	880	880	448	432
Texas	2,598	2,598	1,458	1,140
Utah	302	302	125	177
Vermont	103	103	57	46
Virginia	1,063	1,063	618	445
Washington	823	823	524	299
West Virginia	397	397	189	208
Wisconsin	926	926	615	311
Wyoming	85	85	43	42
U. S. A.	45,100	45,100	29,628	15,472

Figures computed by AFL-CIO Education Department from data of U.S. Office of Education and U.S. Department of Commerce.

In order to make the figures compatible, school attendance is based on the 1969-1970 school year. Income figures are for 1969.

*Based on average daily membership.

Revenue for Education



Although there are those who fondly reassure themselves that "just spending more money" won't solve the problems of education, it is apparent that genuine equality of educational opportunity requires a substantially increased public investment in the schools. The model educational finance plan suggested in the preceeding section would do much to relieve inequitable local tax burdens, but it would also require greatly increased expenditures for education by both the states and the federal government.

One suggestion which has been advanced for raising the federal share is the imposition of a value-added tax by the federal government. The value-added tax is simply a national retail sales tax masquerading under a new name. It would place a still larger share of the federal tax burden on the shoulders of low- and middle-income wage earners and consumers and could completely destroy the thin margin of equity that remains in the federal tax structure. The tax burden would fall entirely on the consumer and all of the regressive characteristics of sales taxes apply with equal force to the value-added tax.

Value added is not a new way of taxing—it is merely a different way of collecting a sales tax. A piece of the tax is collected at each stage of the production and distribution cycle, and, through a complicated process of rebates, credits and price adjustments, it is passed on to each business involved in the production and distribution system.

Each firm pays a piece of the tax directly to the government, reimburses its suppliers for the taxes they paid, and then passes the entire amount on to the purchasers of its products. In this way the firm assumes no part of the tax burden.

This process continues from firm to firm until the product eventually reaches the consumer. The consumer receives no rebate, cannot pass the tax on to anyone else and therefore bears the full burden.

The value-added tax has been a favorite proposal of those who believe in shifting ever more of the federal tax burden away from corporations and onto middle- and moderate-income workers and consumers.

A federal value-added tax would simply substitute for the inequities of the local property tax the new inequities of a federal sales tax.

There is, however, an important source of new federal funds—the elimination of the whole structure of tax loopholes which permits wealthy individuals and large corporations to get away with "bargain basement" tax rates. Congress, in 1969, began the long needed job of tax reform; yet tax reform still remains largely unfinished business. The problems were actually compounded by the 1971 Revenue Act.

Tax provisions in the 1971 Revenue Act amount to a rate reduction of from 15 to 20 percent for the typical corporation. Business groups have been extremely successful in reducing their share of the cost of running the nation. In 1960 the corporate share of the federal income tax was 35 per cent. In 1968 and 1969, when corporate profits skyrocketed to an all-time peak, the corporate contribution to the income tax slipped below 30 per cent, and by 1972 corporation taxes accounted for only 26 to 27 per cent of the total federal income tax revenue.

Business tax assistance in the 1971 Revenue Act—the depreciation speed-up, the investment credit and the Domestic International Sales Corporation—will cost over $5 billion this year. And just by closing the capital gains loophole and eliminating the depletion allowance some $10-15 billion in annual revenue would be recouped.

Such actions would preclude the need for any new taxes and put the nation back on the road toward tax justice. And, as important, such measures would add a badly needed boost to the willingness of Americans to support public investments and bolster the confidence they have in their government's ability to operate in the public interest.

Ending these loopholes which permit corporations to escape billions of dollars in taxes is the best way for the federal government to raise the additional funds needed for educational finance.

There is an immediate and compelling need for an entirely new method of financing the public schools, and the AFL-CIO is committed to the restructuring of local, state and federal taxes which will at last insure genuine equal educational opportunity for all, wherever they live, whatever their family income, whatever their race, religion or ethnic background.

ESTIMATED MAXIMUM GRANTS TO STATES UNDER H.R. 16141 (BASED ON 1969-70 EXPENDITURES)

State	I 10 percent of total State and local expenditures (maximum grant allowed under bill in millions)	II Maximum grant per pupil	III Maximum grant per pupil based on $2,250,000,000 prorated at 63 percent of entitlement
United States	$3,580.0	$89	$57
Alabama	34.9	41	26
Alaska	6.5	97	61
Arizona	31.7	75	47
Arkansas	20.5	45	28
California	420.0	94	59
Colorado	39.1	73	46
Connecticut	61.2	98	62
Delaware	11.5	95	60
District of Columbia	14.4	91	57
Florida	97.9	70	44
Georgia	57.5	51	32
Hawaii	15.6	92	58
Idaho	10.9	59	37
Illinois	219.9	99	63
Indiana	98.8	84	53
Iowa	53.2	79	50
Kansas	41.8	77	48
Kentucky	38.5	55	35
Louisiana	50.8	59	37
Maine	16.6	72	45
Maryland	80.1	94	59
Massachusetts	93.8	86	54
Michigan	164.0	79	50
Minnesota	79.6	90	57
Mississippi	24.5	41	26
Missouri	69.5	67	42
Montana	13.7	77	49
Nebraska	19.8	59	37
Nevada	9.7	78	49
New Hampshire	10.5	76	46
New Jersey	143.9	99	62
New Mexico	17.6	62	39
New York	440.0	132	83
North Carolina	71.9	60	38
North Dakota	9.7	63	40
Ohio	169.0	72	45
Oklahoma	31.4	51	32
Oregon	44.3	92	58
Pennsylvania	208.6	90	57
Rhode Island	13.6	78	49
South Carolina	34.5	52	33
South Dakota	9.4	54	34
Tennessee	46.7	51	32
Texas	164.6	63	40
Utah	20.5	67	42
Vermont	7.1	77	48
Virginia	74.5	71	45
Washington	64.0	82	52
West Virginia	24.5	57	36
Wisconsin	84.7	90	57
Wyoming	5.8	67	42

Source: Computed by the AFL-CIO Department of Education from data of U.S.O.E. Figures in cols. II and III are rounded to the nearest dollar.

STATEMENT BY THE AFL-CIO EXECUTIVE COUNCIL ON FINANCING EDUCATION—BAL HARBOUR, FLA., FEBRUARY 15, 1972

The AFL-CIO has long supported basic changes in the financing of education.

The 1962 convention, in support of a legislative program which eventually brought to reality the Elementary and Secondary Education Act, the Vocational Education Act, the Higher Education Act and many other laws, stated, "There are inequalities which are beyond the corrective power of state and local governments." The convention further stated, "State and local tax systems based largely upon the sales tax and property tax, are regressive at best, falling hardest on the low income groups who can least afford to pay . . . But even if all of the state and local taxes in the nation could somehow be made progressive, the total effect through the nation would still be regressive so long as education continued to be financed entirely by state and local governments."

Ten years later, a series of state and federal court decisions have echoed the views of the AFL-CIO. These court decisions have held:

> The states have a responsibility to ensure equal educational opportunity.
>
> The generally used systems of school finance funds are not equitably raised now nor equitably distributed.
>
> The substantial dependence upon local taxation supplemented by ill-designed state aid formulas has created an inequality of educational opportunity, which is therefore a violation of the equal protection clause of the Fourteenth Amendment.

Some of these decisions will be appealed to the United States Supreme Court on constitutional questions. But the questions raised in the lower court decisions are very real and present an immediate moral challenge to the nation. We must begin now to formulate new and more equitable solutions to the critical problems of educational finance.

The general direction which those solutions must take seems to us abundantly clear. The states and the federal government must take over a substantially larger share of the costs of education and do it in a way that privides equality of opportunity.

Until now the Nixon Administration has shown little enthusiasm for federal aid to education, however recently Mr. Nixon has voiced support for a substantial increase in federal aid. White House reports that the President is considering raising federal funds for education by a value-added tax, which is a disguised version of a federal sales tax, are shocking.

This would simply substitute a new inequitable tax for the inequitable tax systems which the courts have already declared unconstitutional.

The AFL-CIO is unalterably opposed to a federal sales tax, no matter how it is disguised.

The AFL-CIO has proposed a program for plugging the loopholes in the federal income tax that would yield an additional $15 to $20 billion in revenue by closing some of the more glaring loopholes in the present law. Such reform of the existing tax structure is the most equitable way of financing the needed federal share of education costs and we support this alternative.

We welcome the court decisions which are jolting the ststes and the federal government into facing up to the need for equitable answers to the problems of the public schools.

The CHAIRMAN. We appreciate your statement, Mr. Biemiller.

Mr. Burke?

Mr. BURKE. Mr. Biemiller, when you express your opinion here, have you taken any steps to poll the opinions of the AFL-CIO membership in Massachusetts?

Have you taken any steps to poll what the opinions of the members of the AFL-CIO in Massachusetts are on this issue?

The reason I ask that question is that I have received over 10,000 letters from people around the city of Boston, many of them members of your orgainzation, who favor this legislation.

Mr. BIEMILLER. I have no doubt that many of our members favor this legislation, Congressman Burke.

The policy in the AFL-CIO is set by our biennial convention's passage of resolutions and by actions of the executive council between biennial conventions. We do not conduct referendums of membership on the issues.

Mr. BURKE. Actually, you do not know whether the majority of your members favor this bill or oppose it?

Mr. BIEMILLER. We have no way of ascertaining that fact.

Mr. BURKE. Thank you.

That is all.

The CHAIRMAN. Are there any further questions?

Mr. GIBBONS. Mr. Chairman.

The CHAIRMAN. Mr. Gibbons.

Mr. GIBBONS. I want to commend you, Mr. Biemiller, and the members of your staff for an excellent analysis of this piece of legislation. I think you have done a great service for the country and for this committee by the fine way that you have analyzed this legislation and presented your analysis.

Mr. DUNCAN. Mr. Chairman.

The CHAIRMAN. Yes, Mr. Duncan.

Mr. DUNCAN. I aso would like to commend you, Mr. Biemiller, and ask you this question.

A lot of testimony has been given at this hearing that by giving a tax credit for those who actually did not perhaps pay taxes, that it would put more poor children into these schools.

I happen to have here a report of the National Association of Independent Schools which indicates that for a boarding student the median fees by geographical section run from $3,950 down to $2,900; and for day students the sectional medians run from about $800 to $2,000.

In light of these tuition fees, do you think many people of low income would take advantage of the legislation proposed if they could get a $200 benefit or tax rebate?

Mr. BIEMILLER. Mr. Davis.

Mr. DAVIS. I will respond to that by saying that the poor people would cetainly not be involved at all with any school that has that price tag on it with respect to cost.

Mr. DUNCAN. It would have very little effect on their entering the school?

Mr. DAVIS. That is correct.

Mr. DUNCAN. Mr. Chairman, may I enter this report in the record?

The CHAIRMAN. Without objection, it may be included in the record at this point.

(The information referred to follows:)

TUITION FEES, 1972–73

NATIONAL ASSOCIATION OF INDEPENDENT SCHOOLS, BOSTON, MASS.

This survey shows the ranges and medians of 1972–73 tuition fees of 628 of the member schools of NAIS. The tables present figures for different types of schools in the various parts of the country. The separate category "Catholic Schools" has been dropped, and Catholic schools are now included among other schools, according to type. Where there were too few returns to justify a separate section for each region, we have grouped two or more regions togehter.

The schools were asked to indicate the percentage increase in the fee for their highest grade since 1971–72. Opposite the highest grade in each section the number of schools reporting an increase, and the averages of percentage increases reported, are shown. The averages of percentage increases are lower this year than last by 2.5 percentage points. 473 or 75 per cent report an increase over last year. This percentage the previous year was 85 per cent.

Once again about 80 per cent of our member schools and subscribers to New School Services returned figures, and we greatly appreciate their cooperation. A copy of last year's Tuition Report, if desired for comparative purposes, will be sent on request.

Location and grade	Number	Range	Median	Up since 1971-72	
				Number	Average percent
Girls' day:					
New England:					
1	5	1,000-1,300	1,225	11	9.2
3	5	1,200-1,700	1,350		
6	9	1,450-2,050	1,625		
9	22	1,200-2,400	1,893		
12	20	1,200-2,500	2,000		
Middle Atlantic:					
1	27	650-1,600	1,150	28	9.0
3	29	650-1,900	1,190		
6	33	700-2,225	1,545		
9 and 12	43	900-2,450	1,850		
Southeast and South:					
1	7	755-850	700	8	11.2
3	7	725-975	800		
6	8	725-1,500	995		
9 and 12	16	825-1,670	1,100		
Midwest:					
1	9	700-1,225	975	10	7.1
3	9	1,000-1,375	1,125		
6	9	1,150-1,775	1,350		
9 and 12	15	1,075-2,200	1,725		
West, Southwest, and Northwest:					
	1	700-1,300	900	9	8.6
3	5	700-1,350	975		
6	6	900-1,600	1,218		
9 and 12	13	1,200-1,800	1,600		
Girls' boarding:					
New England:					
9	16	3,200-4,500	3,975	8	4.6
12	17	3,200-4,500	3,950		
Middle Atlantic:					
6	1	3,600		7	6.5
9	16	1,200-4,350	3,725		
12	18	1,200-4,350	3,775		
Southeast and South:					
6	2	3,000-3,300		6	7.1
9 and 12	11	2,750-4,100	3,000		
Midwest:					
9	5	1,400-3,875	3,600	2	3.8
12	7	1,400-3,875	2,900		
Southwest, West, and Northwest:					
6	1	3,250		3	7.0
9 and 12	6	2,100-3,600	3,500		
Boys' day:					
New England:					
1	4	720-1,350	1,200	20	9.4
3	5	1,200-1,600	1,350		
6	12	1,450-2,350	1,750		
9	31	680-2,350	1,850		
12	26	680-2,550	1,900		
Middle Atlantic:					
1	19	700-1,700	1,125	29	6.8
3	20	750-1,890	1,275		
6	28	950-2,300	1,763		
9	32	950-2,325	1,925		
12	30	950-2,500	1,900		
Southeast and South:					
1	5	625-925	800	13	13.7
3	6	625-1,015	968		
6	8	725-1,350	1,108		
9 and 12	15	975-2,300	1,200		
Midwest:					
1	4	1,200-1,550	1,300	7	6.7
3	6	1,200-1,950	1,425		
6	7	1,350-2,400	1,650		
9 and 12	11	750-2,500	1,850		
West and Southwest:					
1	6	1,075-1,500	1,135	7	11.4
3	6	1,075-1,500	1,258		
9	14	500-2,000	1,588		
12	15	500-2,020	1,680		

Location and grade	Number	Range	Median	Up since 1971-72: Number	Up since 1971-72: Average percent
Boys' boarding:					
New England:					
3	1	3,100		18	6.4
6	6	3,100-4,300	3,400		
9 and 12	24	1,500-4,300	3,500		
Middle Atlantic:					
6	7	1,800-3,875	3,200	13	5.6
9	20	600-4,000	3,387		
12	17	600-4,000	3,300		
Southeast and South:					
6	1	3,300		7	5.7
9	13	2,600-3,350	2,900		
12	12	2,600-3,350	2,925		
Midwest: 9 and 12	4	2,800-3,790	3,500	1	2.0
West and Southwest:					
1 and 3 and 6	1	3,000		5	8.3
9 and 12	10	2,200-3,800	3,525		
Coeducational day:					
New England:					
1	32	700-1,575	1,000	35	7.9
3	28	700-1,700	1,221		
6	32	700-2,200	1,550		
9	57	850-3,000	1,800		
12	45	850-3,000	1,900		
Middle Atlantic:					
1	91	600-1,950	1,145	78	7.6
3	93	650-2,150	1,350		
6	92	700-2,475	1,600		
9 and 12	86	510-2,575	1,850		
Southeast and South:					
1	51	525-1,460	825	32	10.2
3	51	575-1,530	900		
6	50	650-1,690	1,000		
9	56	780-1,850	1,113		
12	39	850-1,600	1,160		
Midwest:					
1	34	825-1,700	1,050	27	11.7
3	35	875-1,700	1,155		
6	35	875-1,850	1,380		
9 and 12	34	1,200-2,100	1,650		
Southwest and Northwest:					
1	14	600-1,230	1,020	14	7.7
3	15	600-1,400	1,030		
6	18	800-1,720	1,175		
9	19	1,140-2,000	1,550		
12	16	1,200-2,025	1,560		
West:					
1	21	625-1,500	1,000	9	14.5
3	21	675-1,500	1,100		
6	20	750-1,625	1,250		
9 and 12	21	1,050-2,550	1,550		
Coeducational boarding:					
New England:					
6	1	3,600		17	9.9
9	30	2,600-4,600	3,650		
12	31	2,600-4,600	3,700		
Middle Atlantic:					
6	1	3,300		15	6.7
9 and 12	21	1,380-3,800	3,500		
Southeast and South: 9 and 12	9	1,895-3,350	3,200	6	5.5
Midwest: 9 and 12	9	800-3,895	3,400	4	6.3
Southwest, Northwest, and West:					
1	1	3,500		6	4.4
3 and 6	2	3,200-3,500			
9 and 12	14	2,300-4,050	3,500		

ESTIMATED MAXIMUM GRANTS TO STATES UNDER H.R. 16141 (BASED ON 1969-70 EXPENDITURES)—CON.

State	I		II	III	
	10 percent of total State and local expenditures (maximum grant allowed under bill in millions)		Maximum grant per pupil	Maximum grant per pupil based on $2,250,000,000 prorated at 63 percent of entitlement	
Military day: All regions:					
1	1	580		3	6.5
3	2	730-990			
6	5	675-1,700	990		
9 and 12	10	675-1,812	1,378		
Military boarding: All regions:					
3	1	2,900		6	4.6
6	5	1,800-3,400	2,500		
9	12	1,800-3,625	2,675		
12	11	1,800-3,625	2,800		
Canadian day: All regions:					
1	4	550-1,075	788	5	11.0
3	5	600-1,550	900		
6	8	650-1,650	1,300		
9	9	970-1,750	1,500		
12	6	1,125-1,850	1,588		
Canadian boarding: All regions:					
3	1	3,200		4	5.6
6	6	2,275-3,350	3,075		
9	8	2,470-3,650	3,163		
16	8	2,625-3,650	3,225		

New England: Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island.

Middle Atlantic: New York, Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia.

Southeast and South: Virginia, West Virginia, Kentucky, Tennessee, North Carolina, South Carolina, Louisiana, Mississippi, Alabama, Georgia, Florida.

Midwest: Ohio, Michigan, Indiana, Illinois, Wisconsin, Minnesota, Iowa, Missouri, Arkansas, Kansas, Oklahoma, Nebraska, North Dakota, South Dakota.

Southwest: Utah, Colorado, Arizona, New Mexico, Texas.

Northwest: Washington, Oregon, Idaho, Montana, Wyoming, Alaska.

West: California, Nevada, Hawaii.

The CHAIRMAN. Mr. Carey.

Mr. CAREY. Thank you, Mr. Chairman.

Mr. Biemiller, I welcome your constructive criticisms of the legislation. I assure you I share with many other Members of the Congress the hope that we can do something by way of tax route as well as the appropriation route of coming to grips with what I feel will be a very real challenge, if not a crisis, in school finance based on the recent actions and likely actions of the courts which are finding the present financing of schools to be an inadequate way of preparing for our children's educational opportunities. I agree that is a real possibility.

We have to find a new way of financing education in this country; is that correct?

Mr. BIEMILLER. Mr. Harris, our associate general counsel.

Mr. HARRIS. I take it you are referring to the court decisions on supporting the schools out of the local real estate tax?

Mr. CAREY. Right.

Mr. HARRIS. That is up in the Supreme Court now. It probably will be decided in the spring.

I think until then we will not know what kind of standards the Supreme Court is going to lay down because this issue has not been before it heretofore.

Mr. CAREY. I think that we in Congress must be aware of what the courts are saying since they have strongly addressed the principle of equal educational opportunity in terms of school financing as well as in terms of the educational facilities. I hope they don't retreat from it.

The principle, to me, is ironclad. I think we ought to be on notice of what is going to happen. Many parents, have stated before the committee that we have to be prepared for the Federal Government to undertake a much larger share of the educational financing responsibility of the country. Do you agree on that?

Mr. **Biemiller.** We certainly agree on that.

Mr. **Carey.** The so-called wealthy States you mention here, and certainly the poorer States, cannot afford to make any greater effort. They have just about reached the limits of their ability to pay for education from income taxes. State taxes and sales taxes at the State and local level. Is that correct?

Mr. **Biemiller.** As a generalization, we would agree with that statement; yes.

Mr. **Carey.** Our difficulty, and I think you have discussed this in your statement, has been that as hard as we try to get the Federal Government to take a larger share of the burden, the administration has consistently been vetoing appropriations for greater expenditures in education.

Am I correct?

Mr. **Biemiller.** That is very true.

Mr. **Carey.** Why, then, on page 9 of your statement do you express dismay that this bill would short-circuit the appropriations process?

If you want to avoid the vetoes and get more funds for education, why do you fall into the trap and invite vetoes through the appropriations process?

Mr. **Biemiller.** The answer to that is that we have very grave doubts about the use of trust funds in this area and many other areas. That is the whole situation.

Mr. **Carey.** You do understand my dilemma, though. We have been getting educational bills vetoed. We need more money for education. We propose a system that would allow the States and schools to rely on a trust fund as one steady input of moneys from the Federal Government which could not be cut off by vetoes.

Yet you indicate that you want to perpetuate the same process which has been denying funds to the schools via the veto consistently adopted by the administration. I find that to be a total contradiction in your statement.

Mr. **Biemiller.** I would accept the word "dilemma" rather than contradiction.

Mr. **Carey.** I want to share the dilemma. That is the problem.

With regard to financing the needs of the nonpublic schools, you agree that we now have an excess of teachers. For the first time we have reached a surplus of teachers in the schools. Many teachers are unable to find work in the educational system and are leaving education.

Isn't this true nationally as a matter of fact?

Mr. **Davis.** Yes; that is true, Congressman.

Mr. **Carey.** If, as has been predicted by those against and for the bill, the nonpublic schools no longer exist, how many teachers would be added to the unemployment rolls?

Mr. **Davis.** We have no figure on that.

Mr. Carey. Does that not concern the AFL–CIO?

Mr. Davis. Certainly, it does.

Mr. Carey. Would I be wrong if I said the figure would be in excess of 250,000? The figure in nonpublic education is higher than that but let us say 250,000.

Mr. Davis. I don't know but there are other aspects to that, too. The teachers who have dropped out of teaching have because of their high qualifications moved on to other areas of employment. So, we have no figures on what happened to them after they left their role of teaching, particularly those who hold a master's degree or better. For that reason, it is hard to answer your question, sir.

Mr. Casey. I would hope that we would share a concern that a section of our school system which now employs a quarter of a million people in teaching positions alone would disappear from the American scene. This figure does not include administrators, capital construction men, and others employed by the schools.

I should think that would be a major concern to the AFL–CIO as it is to me.

You mention the statement of the AFL–CIO adopted in the 1962 convention that was a far-reaching and a very dynamic statement which assisted us a great deal in passing the historic education measure of 1965.

In your statement today, however, when you mention the 1962 convention you do not indicate what I recall was as a clear-cut policy statement by the AFL–CIO in support of aid to nonpublic schools. Why did you omit that statement?

Mr. Biemiller. We have no objection to aid to nonpublic schools.

Mr. Carey. The statement of 1962 was omitted from your statement today.

Mr. Biemiller. Oh, no; I beg your pardon.

Mr. Carey. As a policy matter you said you favor aid to children in nonpublic schools.

Mr. Biemiller. We have stated we favor aid if it can be done in a constitutional manner, and we give you great credit, Representative Carey, for being one of those who worked out the details of the Elementary and Secondary Education Act which for the first time found a way of breaking through this dilemma.

We are querying the fact that we think the tax credit approach is open to great constitutional questions. The ESEA matter has been settled. You have found a method of getting funds to the schools.

Mr. Carey. I know we worked together on that bill. I hope that the AFL–CIO would now come forth with or recommendation as how to implement this policy statement. If you oppose tax credits, and tax rebates for the poor, then what do you suggest we offer to these children in the hope that they may be able to continue to go to these schools?

Mr. Biemiller. In the first place, as we have stated categorically in this statement, we think that if the Congress would revert to the structure of title I of ESEA, you could go as high as $7.2 billion, a good part of which would go to the nonpublic schools.

Mr. Carey. I hope that your research people will look carefully at the record of implementation of ESEA.

The unfortunate conclusion which has been reached by three successive commissions on school financing examining the implementation of title I of ESEA was that ESEA has been as ineffective vehicle for reaching the poor children in the public schools due to the resistance of implementation at the local level.

So, what you and I have looked for as the design and objective has not been achieved. That is why we are proceeding in this new direction.

Let me finish with this point.

I hope you will agree that there is an open question which will probably be decided by the courts as to what kinds of aid are permitted. I do not think it can be dismissed in one or two paragraphs, by citing a few of the cases involved, such as you have done. None of the cases you cite has involved tax credits at the Federal level. The cases you cite apply only to the use of State moneys in States which have clear-cut constitutional prohibitions against such aid.

Authorities such as the attorney for the American Civil Liberties Union indicated that this is a gray area, and this issue is not open and shut.

I therefore wich that the AFL-CIO would agree that it is not a simplistic matter and cannot be dismissed easily in saying that tax credits are, per se, of questionable validity. The courts have not said that and I therefore wish you would not say that.

Mr. HARRIS. I do not think, Representative Carey, that anyone reading our statement can say that we took a flat position on this. The language raises difficult questions as to the constitutionality.

Furthermore, we point out that none of the cases reaching the Supreme Court has involved tax credits or other forms of direct subsidies to parents. That, at least, is true as respects Federal subsidies. The *South Burlington* case did involve a State subsidy to parents.

Mr. CAREY. That is correct.

Mr. HARRIS. In Vermont, the court held that it violated and the Supreme Court refused to review.

On the other hand, *Green* v. *Connally* did involve tax exemptions and also the deductability of contributions to segregated schools in Mississippi.

Mr. CAREY. I am somewhat bemused, Mr. Harris; you did not mention the Minnesota Federal court case which found Minnesota tax credits to be constitutional. Maybe we had better bring our research up to date.

Mr. HARRIS. In *Green*, I don't regard the lower court or State court cases as being too persuasive with the Supreme Court.

If you study the Supreme Court decisions in this field, you will note that it does not even cite State court decisions.

I certainly regard the issue as very much an open one in the Supreme Court.

I think there is a slight probability that they would hold it unconstitutional, but it is by no means certain. If the committee is interested in the subject, the best study that I know is an article by Paul Freund in the Harvard Law Review three or 4 years ago, not directed, of course, to this particular bill, but directed to the general question of aid to parochial schools.

Professor Freund is the constitutional law professor of Harvard and I think probably is as well known an authority on constitutional law as there is in the country.

Mr. Carey. As long as I am on this committee I will say nothing that could be interpreted as being inimical to the standards of anyone who either went to or teaches at Harvard Law School.

On the money question let us set the record straight on the cost of nonpublic school aid. Secretary Shultz indicated that the administration favored some form of negative income tax, or tax remission, such as the one provided in this bill. I would take it that in principle, at least, you would support that part of the bill due to your objection that 70 percent of the money goes to families with over $10,000 in income.

Mr. Biemiller. We would not quarrel with that principle if there is to be legislation.

Mr. Carey. I am glad to receive that support at least in terms of principle. Let me finish by saying that the reason that the bulk of the money goes to those over $10,000 and between $10,000 and $18,000 bracket is a matter of commendation to your organization. It is in that income bracket that we now find the working families in organized labor, who in some cases, are moonlighting as well to keep up with the cost of sending their children to nonpublic schools. I am very grateful that the New York State AFL-CIO has supported every single act of the New York legislature which has tried in one way or another to assist families who are sending their children to nonpublic schools.

Finally, I think you raised here an issue that is not valid. You stated that it has been argued that those who do not take advantage of public schools should not be required to pay for them. For the record, not one witness who has come here seeking assistance for the nonpublic schools has ever said that. I would ask you to show me the authority for the statement that those who do not take advantage of public schools should not be required to pay for them.

No one has said that. No issue of that kind has been introduced here. Every parent, teacher or other person for or against the bill has said that those who support the nonpublic schools willingly—and enthusiastically support the needs of the public schools.

I wish you would alter that part of your statement. I find it to be totally invalid.

Thank you, Mr. Chairman.

The Chairman. Are there any further questions?

Mr. Gibbons. Yes, sir.

The Chairman. Mr. Gibbons.

Mr. Gibbons. In case anybody ever reads this record, I think it would be interesting to put in the record now information on what kind of aid is available to parochial students under title I of ESEA. I have forgotten many of these things. As I recall, they can get transportation and they can get textbooks, they can get some kind of teaching assistance, microscopes and things of that sort.

Am I correct in that?

Mr. Davis. Yes, sir.

Mr. Gibbons. I had forgotten just what kind of aid is available.

Mr. Davis. Institutional aid of that kind, libraries.

Mr. Gibbons. That is already available?

Mr. Davis. Yes, it is.

Mr. GIBBONS. Under title I of ESEA there can be no money to pay instructional personnel, is that right?

Mr. DAVIS. I think that is correct. You are speaking of teachers now.

Mr. GIBBONS. I thought it would be interesting to point this out, just in case anybody reads the record.

The CHAIRMAN. Any further questions? If not we again thank all of you for coming to the committee.

Mr. H. G. Roundtree, president of the National Council of Catholic Laity.

We are pleased to have you with us this morning.

STATEMENT OF H. G. (JIM) ROUNTREE, PRESIDENT, NATIONAL COUNCIL OF CATHOLIC LAITY

Mr. ROUNDTREE. Thank you, Mr. Chairman and members of the Ways and Means Committee.

As the Honorable Wilbur Mills told you, I am president of the National Council of Catholic Laity. My home is in Little Rock, Ark. Today in my capacity as president of the National Council of Catholic Laity I can truly claim to represent the hopes, fears and aspirations of some 52 million Catholic men and women across the entirety of the United States of America. On their behalf, as well as for myself, I thank you, Mr. Chairman and members of this distinguished committee, for extending to me this opportunity to be heard.

Approximately one-third of this country's school-age Catholic children are in schools operated under the direct or indirect auspices of the Catholic church. During school year 1971–72 4.1 million students were attending Catholic schools. This number is considerably reduced from the level of 1965 when approximately 6 million students were attending these same schools.

In my travels throughout this Nation, in almost every conversation with Catholic lay men and women, the principal reason for declining enrollments in Catholic schools has proven to be the ever-increasing costs of tuition and fees. Many parents who genuinely desire a Catholic education for their children are denied the possibility by the day-to-day exigencies of coming up with enough money for tuition and for food, clothing and shelter.

In general, it can be said that Catholic parents value their schools. They want them. The real question is: Can they afford them? According to statistics compiled by the U.S. Office of Education in conjunction with the National Catholic Education Association, the cost of elementary school tuition has risen in the past 3 years from a nationwide average of approximately $30 per child to approximately $120 per child. In the last year alone the average cost per pupil in Catholic elementary schools has risen by almost $80. The possibility of stabilizing costs and there stabilizing increasing tuitions is a mere pipe dream to many parents and to many school administrators.

The question today before this committee is not whether government intervention on behalf of parents will result in a windfall for parents and institutions, but rather, will government intervention help these parents keep pace with the further escalation of costs and tuition that we all know will occur?

I will not belabor a discussion of the contributions of Catholic education to this Nation since I believe that this committee is well aware of these accomplishments. I must, however, call attention to what I believe to be the potential catastrophe if these schools were to disappear in the quantity and/or the quality which we know them today.

This Congress and others before it has labored hard to grapple with the ill effects of monopolies in American life. The Congress has clearly established its desire in various antitrust legislation to neutralize the potentially harmful effects of monopolistic practices and policies. Am I wrong in assuming that this Congress would not be concerned about the potential effects of a loss of competition in education?

We believe the nonpublic schools of this nation have provided healthy stimulation to the public education sector in their attempt to reach excellence.

Mr. Chairman and members of the committee, we believe, as I think you believe, that our nonpublic schools are every bit as good for this Nation as a parent's decision to choose them for his children is for him.

In purely fiscal terms nonpublic education contributes some $5 billion a year to the Nation's economy, according to statistics compiled by the U.S. Office of Education. Furthermore, it employs slightly under 100,000 full-time teachers alone; this is an age when there is a genuine surplus of qualified applicants looking for teaching positions. In Catholic schools 54 percent of this total are lay teachers, wage-earners and taxpayers who depend in large part on the continued viability of these schools for their livelihood. If one confines his or her examination to merely the financial contribution of these schools, one cannot fail but be impressed with the impact on the economy, the job market and the gross national product were these schools in large number to cease to exist. Yet recent studies indicate that if the present rate of enrollment loss continues, there will only be half as many nonpublic schools on the Nation's 200th birth in 1976 as there are today.

To we parents, we lay people in the Catholic Church, our schools mean much more than merely fiscal figures. To us it means the opportunity to have our children educated in a truly Christian environment. To have them given a value-oriented education, to have them well trained in all of the secular arts and skills necessary to be good citizens, yes; but to have them become good Christians or good Jews as well. In the past our parents have been able, as well as willing, to finance this difference between the sacred and the secular. Today, however, the will is there, but the means are often found wanting.

Those who oppose us in our effort to gain Government recognition of our valued and constitutionally guaranteed freedom of choice in education utilize many arguments, most of which you have heard by this late date in the hearings and which need not bear repeating in their entirety. Let me just respond to a few of the more common.

First, there is a reassurance that it will never happen that all nonpublic schools will close at once, causing great chaos. We concur that in all likelihood they will not just suddenly disappear. But the steady tide of erosion that is taking place indicates that unless it can be turned back, in 5 more years the only schools which will be left will be those for the rich and wealthy only. When this occurs, the "richness" that was the nonpublic schools of the sixties and the early seventies will have dissipated and few of us will have the heart to carry on.

There is the accusation that our schools are basically divisive. I say let them match their claim with the facts. There is not a single example of divisiveness which accrued as a direct or indirect result of nonpublic schools in a community. Rather the story has been one of rich contributions to community life, with benefits which accrued not only to the sacred order but to the secular as well.

There is the accusation that our schools are guilty of perverse discrimination and yet I dare say that there is not a single Member of this Congress from any area who cannot recount innumerable instances of the contributions of nonpublic education to all minority groups in a given area. Our schools are open to all, regardless of their race, color, creed, or national origin.

In the inner-city urban areas we remain where others more fainthearted have left. Our commitment to the poor, the neglected, the black, the chicano, the red is open to every possible public inspection.

Finally, Mr. Chairman, I ask this committee's favorable and early consideration of the tax credit proposals now before it. Favorable consideration because non-public-school parents, in frustration bordering on despair, have turned to you for some assistance through tax relief. Early consideration because there really isn't too very much time left. For example, schools are opening this very date in Pittsburgh with 15,000 to 20,000 fewer students than the 80,832 they closed with in May. In 1963 Pittsburgh Catholic schools enrolled 130,000. Eight Catholic grade schools and one high school have closed during the summer.

There are still 166 grade schools and 43 high schools in the Pittsburgh diocese. There are thousands more elsewhere in the Nation.

On behalf of all parents I solicit your sympathetic and swift consideration.

Thank you very much.

The Chairman. Thank you, Mr. Rountree for bringing to us your statement.

Are there any questions of Mr. Rountree?

Mr. Carey. Just one, Mr. Chairman.

The Chairman. Mr. Carey.

Mr. Carey. Mr. Rountree, I would ask you to comment on a statement that was made in the testimony by an earlier witness. I quote: "It has been argued that those who do not take advantage of public schools should not be required to pay for them."

Speaking as a lay spokesman for the Catholic people of the United States, what is your view of that statement?

Mr. Rountree. Mr. Carey, my only response to that statement is that in all my conversations with people throughout this country and, in fact, this past year throughout the world, meeting with Catholics all over the world, I do not believe that I have ever heard any parent or any responsible adult say that "I should not be responsible for paying for the public education systems just because my child attends a private school."

Mr. Carey. Thank you, Mr. Chairman.

The Chairman. Are there any further questions?

If not, again we thank you, Mr. Rountree.

Mr. Rountree. Thank you very much.

The Chairman. Our next witness is Mr. John J. Murray.

Mr. Murray, if you will, identify yourself for our record by giving us your name and whom you represent and your address. We will be glad to recognize you.

STATEMENT OF JOHN J. MURRAY, DIRECTOR, DEPARTMENT OF NON-PUBLIC-SCHOOL TEACHERS, AMERICAN FEDERATION OF TEACHERS, AFL–CIO; ACCOMPANIED BY GREGORY A. HUMPHREY, ASSISTANT DIRECTOR, DEPARTMENT OF LEGISLATION,

Mr. Humphrey. Mr. Chairman, my name is Gregory Humphrey assistant director, Department of Legislation, American Federation of Teachers, AFL–CIO.

With me is Mr. John Murray, director, Department of Non-Public-School Teachers. He will make the statement.

The Chairman. Mr. Murray, you are recognized.

Mr. Murray. It is a pleasure for me to appear before the committee today representing the American Federation of Teachers, AFL–CIO, in order to share with the committee some thoughts regarding the proposed legislation now before you and matters related to it.

Prior to my present position of director of the Department of Non-Public-School Teachers of the American Federation of Teachers, AFL–CIO, I was president of Local 1776, the Association of Catholic Teachers—the first organization of non-public-school teachers to become affiliated with organized labor.

I taught for 10 years in the Catholic high schools in the archdiocese of Philadelphia. I have also been president of the Montgomery County Chapter Citizens for Education and a member of the State board of that organization in Pennsylvania.

I was educated in both parochial and public schools and received my undergraduate college education as a result of the GI Bill of Rights at at St. Joseph's College in Philadelphia.

I also received a Masters of Religious Education degree from LaSalle College in Philadelphia. I also served on the school board of Saint Helena's in Philadelphia which conducts an elementary school.

As you may be aware, the American Federation of Teachers has supported extensive Federal financing of all levels of education for all Americans. Perhaps even more than members of this committee, we are aware that a true crisis exists in education and that a significant cause of this crisis is the inability of traditional ways of financing education to meet the demands of education today.

Therefore, we are pleased that your committee is showing concern in assisting American education with funds other than those allocated under existing Federal programs.

To us, then, the question is not "should" the Federal government assist education, but "how" it should assist education.

As to the particular piece of legislation which is the primary subject of these hearings, let me say that the American Federation of Teachers while supporting its intent must question whether or not this legislation really accomplishes the end for which it is supposedly designed to accomplish.

Directing our attention to title I of H.R. 16141, again we applaud the intent of the title, namely, equalizing educational opportunities. However, after scrutinizing the specifics and the mechanics of title I, we must urge that this be rejected because it fails to meet the educational needs of American children.

While we believe that the Federal Government must share in the tremendous burden of education, we do not believe that piecemeal revenue-sharing especially if based on State equalization plans can adequately meet the needs of American children, especially those in poorer urban and rural areas of this nation.

I might comment that in failing to support title I we find ourselves in a strange alliance with representatives of the administration. However, our opposition is based on radically different reasons.

It has been our sad experience to see other educational bills vetoed by the current administration and, frankly, we believe that if title I were incorporated, this legislation would likewise be vetoed. Rather than the approach used in title I of this bill, the American Federation of Teachers would very much like to see an in-depth inquiry which would result in the development of a much more suitable plan to help education in America.

Although title II of H.R. 16141 represents only about 30 percent of the funds included in the bill, I am sure that you will all agree that almost 90 percent of the testimony before this committee pertained to title II. Like other witnesses, therefore, I would like to devote most of my remarks to this second title.

The American Federation of Teachers obviously has a vested interest in education including that education offered in schools other than operated by governmental agencies.

I would like to point out that our union's constitution directs us to be concerned with the education of all Americans, and therefore in the past, the American Federation of Teachers has supported not only the original enactment of the Elementary and Secondary Education Act of 1965 but has continually urged fuller funding of these programs. Our support has included support for this Federal legislation insofar as it materially assists nonpublic education.

The American Federation of Teachers not only regrets but decries the recent presidential veto of legislation passed by Congress which would have more adequately funded these programs and which would have given additional educational aid to students, including those in our nonpublic schools who, because of the wisdom of Congress, have been able to participate in programs authorized by that act.

The American Federation of Teachers is proud that with our support, children attending Catholic schools alone received approximately $124 million in educational benefits last year provided by Federal programs according to estimates published by the magizine "Today's Catholic Teacher."

The American Federation of Teachers therefore, unlike some other national education organizations, has not flatly or unequivocably opposed any aid to children simply because their parents have chosen to enroll them in nonpublic schools.

In contrast to our support of other programs which have aided nonpublic education, the AFT, however, cannot support title II of this legislation because of many reasons, some of which I will attempt to explain.

First, along with other representatives of various organizations that have appeared before this committee, we fail to see where the language of the proposed bill specifically provides any assistance whatsoever to those who have no or a low tax liability.

Further, we see that it provides only limited assistance to those who would have Federal income tax liabilities smaller than any amounts they might be paying for the education of their children.

We have heard and welcomed the interpretation offered by Mr. Carey that the bill as written would not only permit but would authorize payments to parents whose children attend nonpublic schools but whose tuition payments exceed their Federal income tax liability.

Unfortunately, too often in the past we have seen interpretations modified or even reversed and, therefore, in the interest of protecting the children of the poor, especially those in urban poverty areas whose education desperately needs assistance, we must view the failure to clearly specify tax remissions or tuition grants to the poor as a primary failing of this proposed legislation.

Unless the legislation would specifically and clearly authorize aid to the poor beyond mere tax credits, the American Federation of Teachers will vigorously oppose this legislation because, like many others, we are convinced it would be not only obviously unfair and totally regressive but would utterly fail to meet the needs to which it is supposedly addressed.

Unfortunately, we believe that if any legislation specifically requires tax remissions or tuition grants that a new problem would arise, namely, constitutionality.

The American Federation of Teachers must concur with authorities who have addressed this committee and recognize an additional constitutional obstacle in tax remissions or tuition grants. This is obviously true. A tax remission must of necessity involve sending a Government check to citizens to reimburse them for tuition payments to nonpublic schools.

Congressman Carey, himself, introduced into the record of these hearings a paper written by Dr. Edward F. Spiers which is a considered defense of the constitutionality of tax credits. I must point out that this paper does not contemplate tax remissions or tuition grants—as a matter of fact, on page 3 of this paper, Dr. Spiers points out that the Supreme Court has said:

> There is a fundamental and constitutional difference between tax exemptions or deductions and direct grants of public funds.

The implication is that one cannot justify tax remissions on the same basis as he could tax credits. More specifically, the Chief Justice in his decision in the *Walz* case referred to by Dr. Spiers wrote as follows:

> Obviously a direct money subsidy would be a relationship pregnant with involvement and, as with most governmental grant programs, could encompass sustained and detailed administrative relationships for enforcement of statutory or administrative standards * * *

Although the specific matter of tax credits or tax remissions has not come before a Federal court, it would be very foolish to ignore the unanimous decision rendered by a three-judge Federal court in the *Lemon* v. *Sloan* case which ruled that Government payments to reimburse parents for tuitions paid to nonpublic schools were unconstitutional. In their opinion, this three-judge panel stated:

> The State has no more power to subsidize parents in providing a religious education for their child than it has to subsidize church-related schools to do so.

In respect to aiding sectarian education, the courts therefore have been more wary when direct payment of moneys are involved rather than merely some form of tax "escape."

To circumvent this very problem of the questionable constitutionality of tax remissions or tuition grants, we have heard it suggested both by members of this committee and witnesses before the committee that tax remissions for tuition payments be provided in a separate and distinct clause and that a so-called "separability" clause be added, as well.

Because of what we have said before about the doubtful constitutionality of tax remissions, we believe that this approach would have the net effect of not providing any tax remissions or assistance whatsoever to the less affluent and again would fail to accomplish its intended result.

With a separate provision and a separability clause, we can foresee a repetition of what has occurred in Pennsylvania where private nonsectarian schools, including elite boarding schools, are being reimbursed by the State for services performed while sectarian schools, including schools serving the poor in Pennsylvania cities, have been denied any such aid because of court decisions based on the first amendment's religious safeguards.

We believe that separating tax remissions from tax credits and providing a separability clause would in the end result in the Federal Government subsidizing the education of the wealthy while denying the legitimate needs of the less affluent.

Naturally, with no separability clause, we see the possibility that the entire act might be ruled unconstitutional and, therefore, despite your good intentions, the American children would still be denied the Federal aid their education demands.

There is another constitutional problem which again was highlighted in the *Lemon* v. *Sloan* decision previously mentioned. The court in its decision wrote:

> Second, we conclude that the effect of the act is to aid the schools and therefore the failure of the State to insure that the funds are restricted to secular education or general welfare services renders the act unconstitutional.

Since title II of H.R. 16141, like the act which was ruled unconstitutional in the *Lemon* v. *Sloan* case, does not place any restrictions on the use of these funds, it likewise would be in constitutional danger because the credits or remissions could conceivably pay for the entire education of a child in a sectarian school—including that part of his education which is religious and sectarian.

It is possible that the tuition paid and reimbursed by remissions or tax credits may well exceed the actual cost of purely secular education in sectarian schools and, therefore, may be judged to be "advancing religion." To avoid such a hazard, we might be tempted to suggest putting some restrictions on what may be permitted as a tax credit.

For instance, someone could suggest an arbitrary figure of five-sixths of tuition paid as a maximum allowable for tax credits or tax remissions. The justification for such a figure might be attempted by pointing out that in many sectarian schools, especially secondary schools, formal sectarian religious education occupies one-sixth of the student's subject roster. In other words, he would go to five classes other than religion and one class of formal religion.

However, whatever restriction might be placed in the bill gives rise to yet another constitutional hazard; namely, the entanglement hazard, and so, gentlemen, we are caught in what Justice White called the "Insoluble Paradox" caused by various Supreme Court rulings especially in the *Lemon* and *Di Censo* decisions.

Therefore, in our assessment at least, the constitutional sailing of tax credits with or without tax remissions would not be as smooth as some would have us believe—and with tax remissions would be very rough, indeed.

For the sake of argument, let us assume, however, that both tax credits and tax remissions would be ruled constitutional. Even if there were so, the American Federation of Teachers must oppose this method because we are convinced that it still would not achieve its purpose; namely, aiding education.

To us, it is a gross oversimplification to equate tax credits with assisting education. This is a false assumption based on a disproven premise. The premise offered is that tuitions are causing closing of schools and the decline in enrollment in nonpublic schools, especially Roman Catholic schools.

Incidentally, may I point out that the problem is the decline in enrollment—not the "closing the schools". Closing of schools is the effect of declining enrollment more than it is the cause of declining enrollment.

To my knowledge, not one witness presented any concrete evidence to show that tuition costs are in fact the primary cause of declining enrollment in nonpublic schools. Therefore, there has been no rebuttal to effectively counter the contrary findings of studies which have been made on this subject.

The President's Commission on School Finances and that Commission's panel on nonpublic education authorized two federally-funded studies of the reasons for the decline in enrollment. In both of these studies, the conclusion was that financial reasons alone are not the primary cause of the decline in enrollment in nonpublic schools, including (and particularly) Catholic schools.

Farther Ernest Bartell who administered the national economic study of Catholic elementary and secondary schools for the President's Commission on School Finances wrote in the September 1, 1972 edition of America magazine—a leading Catholic periodical:

> * * * It is, however intuitively reasonable that the extra few dollars of tuition increase during the 1960's, when considered alongside the growth in family incomes, would not be adequate to explain the rapid rates of enrollment decline. Moreover, enrollments are falling equally in areas with zero or below-average tuition.

> * * * The combination of relatively low charges and the patterns of enrollment decline work to verify a crude statistical estimate for the Nation that tuition increases have probably not accounted for more than 20 percent of the enrollment decline since peak years.

For the benefit of the members of this committee, we have attached a copy of this entire article to our statement.

At any rate, the weight of the evidence presented to it forced the President's Commission to write in their final report:

> * * * and despite the pressing financial problems of the Roman Catholic schools, we find that their survival does not depend totally or even mainly on the amount of money available to them.

In the same vein, members of the President's Panel on Nonpublic Education, which included representatives of nonpublic schools, were compelled to list a total of eight reasons for the decline in enrollment in nonpublic schools. These reasons were read into the record on the second day of testimony by representatives of CREDIT.

Further evidence of the incorrectness of what we could call an oversimplification is included in the Gurash report which was submitted to the members of this committee and which report was highly praised by the committee when Mr. Gurash testified during these hearings. In that report, the members of this study commission wrote:

> * * * There is no evidence of a strong relationship between changes in tuition (or student fees as proxy tuitions) and declines in enrollments. To the contrary, evidence to date, at the levels of tuition now charged, seems to indicate that the demand for Catholic school education is insensitive to current tuition levels—that is not to say the future demand may not be.

In addition, another study (which was called one of the most thorough surveys on the effects of Catholic Education by a witness before this committee who favored tax credits), that is, the study made by Father Greely and Mr. Rossi, sometimes referred to as the University of Chicago study financed by the Carnegie Foundation, reported that "cost" as the reason why a child or children did not attend a Catholic school was given by only 18 percent of the parents of elementary school children and by only 22 percent of the parents of children in secondary schools.

Finally, we have evidence offered by the often-referred-to Fleischmann commission report. The author of part of this report and the editor of the report coauthored an article in the Saturday Review on July 22, 1972. This entire article has been submitted by another witness before this committee. However, I would like to quote just a small part of it:

> In the past, tuition in most Catholic schools has been so low that it has not played a major part in the enrollment decline * * *.
>
> If enrollments were dropping primarily in inner cities, then it could correctly be inferred that even modest tuition presented an unbearbale family burden But enrollment is dropping even faster in affluent suburbs. The very families that can pay tuition most easily are the ones that are choosing to send their children to free public schools. Further, fully one-third of the Catholic elementary schools that closed in the past five years in New York State, for example, charged no tuition at all.

In the face of such evidence, we believe it would be foolhardy for anyone to insist that tuition cost are, indeed, the primary reason why a majority of children who are not enrolling in nonpublic schools are failing to do so simply because of tuition costs. Therefore, we must conclude that tax credits and/or tax remissions cannot possibly be the panacea that some of the witnesses before this committee would have us believe. Even if they were good medicine, our "patient" doesn't have the disease they would "cure."

Far more important, I think, is the consideration of the practicalities involved in tax credits and tax remissions and we should ask ourselves: "Could tax credits or remissions be of significant help in assisting education?" Also, "How would tax credits actually work?"

Obviously, payment for tuition paid during a calendar year would have to be reported on a taxpayer's income tax return filed during the year after they were paid. In other words, the parent would first have to pay the tuition and then wait for many months before they could get either credit or tax remissions.

Except for those who are wealthy enough to wait long enough to realize the benefit of a tax credit or a tax remission, these would hardly give a parent the wherewithal to pay the tuition in the first place and hardly would be enough of an incentive to be crucial in the decision whether or not his child or children should attend a nonpublic school or be transferred to a free public school.

It would matter little to a poor family that, if they could pay tuition they would get it back, if they don't have the money to pay the tuition in the firts place.

The tax credits plan being considered, moreover, has many other drawbacks. First of all, it does not relate ot the quality of education offered in nonpublic schools, and this is an important factor in the decision of a parent in choosing a school for his child.

Tax credits could not possibly improve education if the parents receiving the credit would not be supplying additional funds to the schools for improving the education they offer.

You have heard testimony, especially in regard to the elementary schools in the archdiocese of Philadelphia that some schools have not or do not charge tuitions and that where they have begun to charge tuitions, the net increase in funds available for education has been partically nil. Again, let me quote from the Gurash report which studied the situation in the archdiocese of Philadelphia:

> There is evidence, however, in the City of Philadelphia that direct charges (tuitions or student fees) in elementary schools are being paid for by an approximately equal reduction in church collections. This means that total support of the parish church school complex is not likely to change level significantly—rather parents will redistribute their giving, channeling funds directly into the school budget, bypassing the collection plate.

Providing a tax break for parents, however worthy that may be, does not mean that education will be assisted, but only that the financial situation of some taxpayers will be improved. And, without improvement in education, I fear that many parents will still choose not to enroll their children in a nonpublic school which, perhaps because of lack of sufficient funds, cannot offer their children the best education.

Even if the funds supposedly made available for education did actually reach the schools, this still does not mean that education would be improved simply because the funds have no strings attached.

For example, a pastor operating an elementary school in many Roman Catholic dioceses could simply choose to redistribute his budget, leaving the schools with only the same net funds and foregoing any significant improvement in education jor other activities he may decide to fund.

Speaking as a representative of employees of nonpublic schools, I decry the fact that some safeguards provided in title I of the act are notable by their absence in title II.

You have heard Monsignor Schulte, superintendent of schools of the archdiocese of Philadelphia, testify that the primary reason why Catholic schools operate on a much lower per pupil cost is the lower salaries paid to teachers in those schools.

May I point out that in the Philadelphia archdiocese, itself, the minimum starting salary for a lay teacher in the elementary schools is only $3,600 a year—or only $90 a week during the 40 weeks of school those teachers work. A basic exercise in math indicates that this is below the minimum wage when one considers that a teacher works at least 50 hours a week in and out of school.

This is a situation which our union has been trying to correct by obtaining for these teachers their rights to representation and collective bargaining. Unfortunately, due to the resistance of the officials of the archdiocese to date, we have been unable to achieve a collective bargaining contract, and decent salaries for these teachers.

I might mention that these teachers do not receive any guaranteed fringe benefits—not even normal hospitalization and medical coverage. We believe that since H.R. 16141 in title I provides minimum wages for laborers and mechanics, that some safeguards of employees' rights should be provided for the employees of nonpublic schools if the schools are to be assisted even indirectly with public funds.

Finally, let me briefly touch on the fact that tax credits would be nothing new. They represent only a modification of existing tax structures. Federal income tax laws already provide a way for parents to receive a reduction in taxes for the cost of sending their children to many nonpublic schools.

Many schools do not charge tuition, and if those schools are connected with a tax-exempt organization, the parent need only make a contribution to that organization to cover the cost of education for his children and he will, of course, receive the benefit of a tax deduction for that "contribution". Even this significant aid for parents in affluent areas has not prevented or reversed the decline in enrollment in nonpublic schools, and would strongly indicate that tax credits would fail in this regard, as well.

Therefore, gentlemen, because of social, philosophical, educational, and practical reasons, the American Federation of Teachers cannot support title II of this bill even though it may seem to be the expedient way to do "something" for parents with children in nonpublic schools.

The American Federation of Teachers does support the concept embodied in ESEA that aid should follow the children and aid should be for education—something to improve education, whether that education is offered in public or nonpublic schools.

We congratulate the members of this committee and their colleagues who attempted to more adequately fund educational programs and urge further investigation into the best means by which this emergency in education can be adequately assisted by programs which address the real needs of our children.

Thank you very much.
(The magazine article referred to follows:)

[From American, Apr. 1, 1972]

GOOD NEWS AND BAD FOR CATHOLIC SCHOOLS—ANALYSIS OF ENROLLMENT AND FINANCES YIELDS A MIXED MESSAGE FOR FULL-TIME CATHOLIC EDUCATION

(By Ernest Bartell [1])

Reporting the somewhat painful results of the national economic study of nonpublic schools for the President's Commission on School Finance places the analyst in jeopardy similar to that of the hapless messenger of ancient classical times sent home from battle to report defeat to the king. The messenger himself too easily becomes the scapegoat for the situation he reports. So it is with contemporary economic analysis and projections of Catholic elementary and secondary school enrollments, costs, revenues and deficits. It is easy to expend energy on capital punishment of the analyst rather than on cure of the situation he reports. At the same time, even pessimistic projections of enrollment and finance belong in the category, not of *fait accompli*, but of serious challenge to those who believe Catholic schools ought to have a future. Only participants in the Catholic educational process itself, families, teachers and administrators together, have the power to determine whether the required response to unfavorable trends is feasible and probable.

Certainly the results of the national study are not cheery. If not checked, the declines in enrollment of Catholic elementary and secondary schools that have been evident since the peak year of 1962 can be expected to increase at an expanding rate. Elementary schools are hardest hit with 1970 enrollments of 3.4 million expected to drop to 2.15 million by 1975 and 1.4 million by 1980 unless checked. While this represents a 60 per cent decline in a decade, the rate of decline in secondary school enrollments is somewhat less dramatic, predicted to fall from slightly over one million in 1970 to 822,000 in 1975 and to just less than 700,000 by 1980, for a rate of decline of about 30 per cent thorugh the decade. The percentage of Catholic elementary school age children actually enrolled in Catholic elementary schools will have fallen from a peak of almost 54 per cent in 1958 to 31 per cent in 1970, and down to 22 per cent by 1975 and less than 20 per cent by 1980.

Some of the reasons behind this unpleasant projection are outside the control and even influence of educational policy decisions within the Church. For example, the national decline in birth rates during recent years has affected Catholic as well as non-Catholic families, and is reflected in declining baptismal rates, with the additional possibility that baptismal rates, which act as some measure of institutional Church loyalty, may be declining even faster than births in Catholic families.

Some other demographic factors are more subject to Catholic educational policy decisions, Migration of Catholic families, especially out of urban areas where Catholics and their schools have been traditionally concentrated, has not been matched by the construction of new Catholic school facilities in newly settled outlying areas. At the same time, the slower rate of decline in secondary school attendance is partly due to the fact that smaller Catholic school-age populations have not yet reached high school age.

In addition to the influence of declining rates and urban migration patterns, it is legitimate to seek the impact of the price and taste factors that influence the demand for any service open to voluntary purchase. The services of Catholic schools in the eyes of their users are finally a voluntary purchase from among a variety of educational alternatives open to Catholic parents.

Rising tuition charges as a result of inflationary cost pressures are sometimes cited as the principal villan in the story of declining Catholic school enrollments. Conventional economic theory would suggest that the quantity of any good or service demanded could be expected to diminish as a result of price increases, with the amount of impact dependent upon such factors as the price and availability of substitutes, changing preferences of buyers and changes in their ability to pay as measured by family incomes. In reality, all of these variables are changing at the same time, while data on any of them are not easy to come by. It is therefore difficult to make a precise quantitative allocation of the proportion of the total enrollment decline that should be attributed to each of the factors. Nevertheless, the covergence of results in several studies from a variety of analytic techniques applied to a number of situations can prove quite useful and reliable for policy purposes, if not for scholarly elegance.

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[1] Ernest Bartell, C.S.C., the president of Stonehill College in North Easton, Mass., administered the national economic study of Catholic elementary and secondary schools for the President's Commission on School Finance.

For example, regression analysis and other statistical devices applied to available national data, as well as data for regional case studies, indicate that tuition has not been highly significant in explaining changes in enrollment through the 1960's. Such a result is not difficult to understand. Catholic elementary schools were historically envisioned by the Councils of Baltimore as a quasi-public educational opportunity for Catholic children to be funded largely by the general support of the local Church communities. As a result, despite relatively large increases in recent years, annual reported tuition charges in the nation's parochial schools averaged only $70 by 1970. Obviously, at some level the response of enrollment to tuition changes alone would become significant, and this may be the case in some dioceses with charges far above the average. It is, however, intuitively reasonable that the extra few dollars of tuition increase during the 1960's, when considered alongside the growth in family incomes, would not be adequate to explain the rapid rates of enrollment decline. Moreover, enrollments are falling equally in areas with zero or below-average tuition.

In addition, the evidence does not suggest that Catholics have been withdrawing children already enrolled in Catholic schools, but instead have been failing to enroll younger children as they reach school age, with the result that the decline in total enrollment is most heavily concentrated in the lowest grades, where tuition and fees are the lowest in the Catholic system. The combination of relatively low charges and the patterns of enrollment decline work to verify a crude statistical estimate for the nation that tuition increases have probably not accounted for more than 20 percent of the enrollment decline since peak years.

Although it is likewise impossible to specify with complete precision the extent of the changes in attitudes and tastes of Catholic families concerning Catholic schools, there is increasingly cumulative evidence of reluctance among Catholic families to enroll their children in a school system whose future is uncertain and whose educational identity is increasingly diffuse in the eyes of its potential users. On the basis of evidence from a number of case studies, reluctance to enroll children reaching school age in Catholic schools appears to be greatest among younger, better educated and more affluent Catholic families. In general, as perceived by these families, Catholic schools neither guarantee the first-rate, up-to-date secular education that takes high priority in their own preferences, nor do they any longer insure a clearly religious educational component, which also enjoys high priority in their educational preferences.

The results from many attitudinal surveys suggest that for many Catholics the loss of the religious teacher in the classroom has meant a loss of both religious and secular educational values as it becomes financially necessary to replace the contributed services of relatively experienced and well-trained religious teachers with the relatively high-salaried services of inexperienced and untrained lay teachers. Thus, on the one hand, some Catholic parents perceive Catholic schools, despite educational innovations, to be inferior to their public school counterparts in secular education, and no longer sufficiently superior to contemporary alternatives for religious education to justify support. On the other hand, for another group of more tradition-minded parents, the relative freedom in the classroom of remaining religious teachers and new lay teachers has meant a dilution of traditional doctrinal, moral and disciplinary standards.

Data from case studies of the economic and educational characteristics of individual families and parishes indicate that decisions against Catholic school enrollment tend to be more prevalent among more liberal parents rather than the more tradition-minded. In detailed econometric analysis of family and parish characteristics in St. Louis, for example, it is evident that enrollment declines are most rapid in the parishes that have the "best" Catholic schools by conventional standards of high expenditures per pupil, high teacher qualifications and low pupil-teacher ratios. Although these schools, located in relatively more affluent urban and suburban areas, are the best in the Catholic system by these standards, they are perceived, especially by the younger, better educated and more affluent parents living in these parishes, to be inferior to available public schools in the same areas.

In fact, loyalty to Catholic schools appears to hold up best in lower-middle-income urban areas whose Catholic schools have the poorest conventional qualifications within the Catholic school system, but which are nevertheless perceived by typically less highly educated Catholic parents to be relatively better in comparison with local public school alternatives. Some of these latter preferences may be based upon greater regard for tradition, fear of exposing children to currents of secular social change and fear of racial integration, although it is not possible to specify these attitudes conclusively. If present patterns of enrollment decline are allowed to continue, however, the 22 per cent of Catholic children still enrolled in Catholic schools by 1976 are likely as not to be the sons and daughters of lower-middle-income, less well-educated white urban Catholics, with some pockets of enrollment in southern communities—mostly white, except for Louisiana.

The message from national analysis is further darkened by cost trends that continue to rise as enrollments fall. The much-publicized increases in operating costs at all levels of education since the 1950's have been especially severe among Catholic systems. While per pupil operating costs of the nation's public elementary and secondary schools increased about 250 per cent between the late 1950's and 1970, the increase for the typical Catholic system during the same period was a whopping 400 per cent per pupil.

The reasons for exceptional inflation are not hard to find. Education is a labor-intensive industry with little opportunity to introduce labor-saving devices and increase productivity in order to offset wage increases. As a result, wage increases to enable teacher incomes to keep pace with incomes of their peers in other activities must be passed along in higher costs per pupil. In Catholic schools this process has been intensified by the continued decrease in contributed services of religious teachers as a result of their decline in numbers. National projections of religious teacher supply indicate that the 52,000 teachers available in 1970 will be reduced as much as 10,000 by 1976. At the same time, pressures to provide high conventional standards of educational quality in order to maintain enrollments have narrowed the gap between public and parochial school salary schedules, while lowering parochial school class size to more competitive levels.

A major component of the economic study for the President's Commission was construction of computerized projection models of costs and revenues of Catholic schools designed to incorporate the best available estimates of religious teacher supply, enrollment, inflationary trends in the economy and any selection of cost-sensitive policy options open to administrators concerning consolidation, class size and teacher salaries, both religious and lay. Even in the "good times" model, which assumes reasonable success of the present anti-inflationary national incomes policy and some degree of school consolidation in response to declining enrollments, the annual Catholic school operating costs per pupil for 1975–76 are expected to rise to a national average of $575 at the elementary level and $950 at the secondary level. For 1980 the equivalent costs per pupil are $825 and $1,250 respectively.

The ability to meet these costs privately depends upon the degree to which tuition charges can be allowed to rise without greatly affecting enrollment, upon the growth in general church operating revenues out of which school deficits are currently subsidized and, finally, upon the percentage of those revenues that can be justifiably allocated to school subsidies. If tuitions are allowed to rise no faster than family incomes, thereby stabilizing the economic burden on families, and if the present share of general parish revenues allocated to school subsidy, slightly over 50 percent, is also stabilized, then only under the most optimistic projections of church revenues and stabilization of costs in the "good times" model can the accounts of the Catholic schools be balanced. Even then, deficits would be eliminated only when total enrollments had fallen to below 20 percent of the Catholic school age population, and if school decisionmakers would also be successful in consolidating schools sufficiently to maintain present pupil teacher ratios despite the enrollment declines.

Under more reasonable assumptions about consolidation policies, the deficits per-pupil are likely in the "good times" model to reach $200 by 1976, and to remain rather stable thereafter, with increases in variable costs offset by enrollment declines. In the "hard times" model, however, which assumes little success in the nation's efforts to control inflation through an incomes policy, and which assumes pessimistically the spread of unfavorable revenue trends currently experienced in some major dioceses, the deficit per pupil would be expected to reach $300 by 1976 and $500 by 1980.

Moreover, even in the best of all worlds, in which costs, revenues and consolidation policies combine to make it possible for school deficits to be covered without increasing the burdens on parish revenues or parential incomes, it must be stressed that the schools would be absorbing over 50 percent of church operating revenues available for all purposes in order to provide full-time education for only one out of five Catholic children of school age. The commitment of so much to so few must obviously be evaluated in light of provision for the educational needs, both religious and secular, of the 80 per cent of Catholic children outside full-time Catholic schools. And under more plausible assumptions about the feasibility of Catholic school consolidation and equally plausible predictions of inflationary trends and church revenue patterns, the additional deficits required to educate those 20 percent of Catholic children easily exceed the amounts that could be expected politically in aid from the public sector, even if constitutional barriers are surmounted.

Does this mean that the message from co-ordinated analysis of enrollment and finances is one of defeat for full-time Catholic education? It could, but need not.

On one hand, without deliberate and positive efforts within the Catholic community itself to reserve unfavorable trends in enrollment and finance, there is no reason to expect the outcome to differ from the above predictions, since the same predictive techniques have proven remarkably accurate in earlier case studies. On the other hand, if Catholics themselves—administrators, educators, parents and public—are willing to intervene imaginatively it is possible that unfavorable trends may be halted, that favorable attitudes toward the schools may increase, that educational and financial innovations may be successfully introduced.

It may be argued, too, that the American public has never before been more open to the need for educational pluralism, perhaps partly as the result of minority group pressures in recent years. The Church alone, however, has a broad institutional base of nonpublic education to meet the need for alternatives to existing educational models. Moreover, if sufficiently motivated, Catholics have the ability to support educational initiatives. Since they now support the operation of their schools with subsidies that amount to little more than one per cent of their family incomes, an increase of only one percent in voluntary contributions could almost double existing operating subsidies to Catholic education.

If the Church is genuinely committed to an educational mission, the example of imaginative leadership among Catholics in confronting their own educational problems would not only strengthen the case for public aid to full-time schools, but could ultimately serve as a national model in dealing with broader issues about the form and content of education that transcend sectarian needs. Perhaps it is in the creation of a model for the future of education that the Church ultimately can best realize its educational mission in the contemporary world.

The CHAIRMAN. We thank you, Mr. Murray and Mr. Humphrey, for bringing this statement to the committee.

Are there any questions?

Mr. CAREY. Just one question.

The CHAIRMAN. Mr. Carey.

Mr. CAREY. Mr. Murray, as representative in the AFL-CIO of the nonpublic school teachers, what is the number of teachers, administrative and other personnel involved in nonpublic education? These, I assume, would be the targets of your organization for membership.

Mr. MURRAY. The total would be in the vicinity of 203,000.

Mr. CAREY. Those are in all nonpublic schools?

Mr. MURRAY. That is correct.

Mr. CAREY. Approximately how many are now organized? What percentage?

Mr. MURRAY. I have to distinguish when you say "organized."

Mr. CAREY. Within your organization.

Mr. MURRAY. Many are organized in associations of their own design.

Mr. CAREY. I mean members of AFL-CIO affiliated organizations.

Mr. MURRAY. We represent about 6,000 now. We are attempting to represent more.

Mr. CAREY. I understand that. I wish you success in your efforts. Perhaps if you get the 203,000 organized, we might find a different approach to the bill here.

I must take exception to one part of your statement. On page 13 you indicate that where schools connected with tax-exempt organizations do not charge tuition, the parent need only make a contribution in lieu of tuition. I do not think that is the view of the Internal Revenue Service.

I think if you are making a contribution to an organization and the money is for education you do not get the tax exemption. It is not allowable.

Mr. MURRAY. I refer to my own personal experience. I specifically point out that there are some inequities in the Internal Revenue rules and regulations, at least in my opinion.

Mr. CAREY. I am talking about the law.

Mr. MURRAY. The practical situation, and I am sure it would be within the scope of what we might call legality, would be the situation in the Archdiocese of Philadelphia, where I am much better acquainted than anywhere else, so I will speak to that, for a parent sending a child to a secondary school in Philadelphia, the cost for that child's education is broken down as follows:

The parents pay $300 tuition and the parish from which that child comes pays $150 tuition. Many pastors seek direct payments from the parents of these secondary children for that $150 and many parents go ahead and pay it.

In that case, the parents would write a check to the church, to the parish; it obviously would be, in my opinion at least, eligible for a tax deduction.

Mr. CAREY. I just want you to be aware that the IRS has been more scrupulous lately in making it clear. In fact, instructions to taxpayers included with the mailing out of your annual return state that contributions made toward educational expenses in connection with parochial or other schools are not deductible.

Mr. MURRAY. They are not directly for education. They are made to the parish technically and the parish provides the education.

In similar circumstances, you have elementary schools which charge no tuition whatsoever. Obviously they are supported, Mr. Carey, by contributions of the parishioners.

Mr. CAREY. I would not want anyone misguided by the notion that they can rest on the premise that such a method of financing schools is allowable under the law. It simply is not. If it is happening, it is one more reason why we have to find a resolution of this question.

Finally, I want to commend you. You received your education, as I did, under the GI bill of rights. That was a case of a Federal contribution to an individual. He could choose any institution he wanted to attend. You chose a religious one. You received funds for your education. That program is also available at the secondary level, not only at the collegiate level.

It may escape analysis on a legal basis but there is very little difference, in my mind, between giving moneys to a former soldier who could use the money for education in any institution he chooses and the genesis of this bill, which is simply to allow that kind of choice to a parent in the education of his children.

Thank you, Mr. Chairman.

The CHAIRMAN. Are there further questions?

Mr. GIBBONS. Yes, sir, Mr. Chairman.

The CHAIRMAN. Mr. Gibbons.

Mr. GIBBONS. I heard over the radio or read in the newspaper the other day that the Office of Education had been coming out with a new study concerning enrollment in private schools.

Mr. MURRAY. Yes, sir; I have it with me.

Mr. GIBBONS. You do have that with you?

Mr. MURRAY. Yes. I have a condensation of the full report; yes.

Mr. GIBBONS. What does the report show?

Mr. MURRAY. The report shows, very briefly—it is broken down into four areas: total nonpublic school enrollment; Roman Catholic school enrollment; other religiously affiliated enrollment; and nonreligious affiliated enrollment.

It shows, for example, that the enrollment in Roman Catholic-affiliated schools has decreased approximately 4.6 percent since the peak year of 1965–66 and that the enrollment in other schools has increased about 5 percent since 1965–66. So, almost the reverse situation exists.

I have the figures if you would like, or I can supply a copy of this for the committee for inclusion in the record.

Mr. GIBBONS. I would like to put this report in the record.

The CHAIRMAN. Without objection, it will be included in the record at this point.

(The report referred to follows:)

[HEW News Release]

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
OFFICE OF EDUCATION,
Washington, D.C. September 3, 1972.

Fall enrollment in the Nation's Catholic elementary and secondary schools declined 17 percent from 1961 to 1970, while the number of students attending other nonpublic schools increased 66 percent, HEW's Office of Education announced today.

According to a preliminary analysis of data compiled by the National Center for Educational Statistics, total nonpublic school enrollment decreased 8.1 percent over the span of 10 school years. The number of students enrolled in public schools rose 22.5 percent during the same period.

The data reveal that total nonpublic school enrollment fell from 5.7 million in 1961–62 to 5.3 million in 1970–71, and the number of students attending Catholic schools dropped from 5.1 million to 4.2 million. Catholic schools, which enrolled 91.5 percent of all nonpublic students in 1961–72, accounted for 80.6 percent of the total 10 years later

While declines in Catholic school enrollment during this period ranged from a 5.6 percent drop in the Southeast to a 21.8 percent drop in the Great Lakes and Plains region, the number of students attending other nonpublic schools increased from 615,548 to 1,021,974.

The data also revealed:

During the 1970–71 school year, 10.3 percent of all elementary and secondary pupils attended nonpublic schools, compared with 13 percent in 1961–62.

Nonpublic school enrollment in each of the grades 1 through 8 represented a larger percentage of total enrollment in those grades than in grades 9 through 12.

Nonpublic schools are more prevalent in the North Atlantic region, where 39.3 percent of all pupils attending nonpublic schools are located.

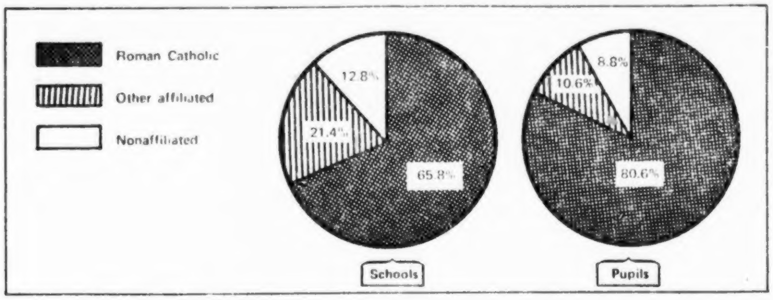
These and other data on nonpublic schools will be published later this year in a report, "Statistics of Nonpublic Elementary and Secondary Schools—1970–71," that will be available through the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Note to Editors.—Following is a table showing nonpublic school enrollment and percent change from 1961–62, and circle graphs showing nonpublic school and pupil enrollment, by affiliation, 1970–71.

NONPUBLIC SCHOOL ENROLLMENT AND PERCENT CHANGE FROM 1961-62 TO 1970-71, BY AFFILIATION OF SCHOOL

Year	Total enrollment		Roman Catholic		Other affiliated		Nonaffiliated	
	Number	Percent change	Number	Percent change	Number	Percent change	Number	Percent change
1961-62	5,736,480		5,120,932		375,597		239,951	
1965-66	6,304,772	+9.9	5,481,325	+7.0	482,177	+28.4	341,270	+42.2
1968-69	5,729,166	−.1	4,843,188	−5.4	519,821	+38.4	366,157	+52.6
1970-71	5,271,718	−8.1	4,249,744	−17.0	559,162	+48.9	462,812	+92.9

Nonpublic Schools and Enrollment, by Affiliation of School, 1970–71



(Note. Data based on a survey of nonpublic schools conducted by the National Center for Educational Statistics, U.S. Office of Education. Data on Catholic schools were collected by the National Catholic Educational Association under a U.S. Office of Education grant.)

The Chairman. Mr. Betts.

Mr. Betts. How do the Roman Catholic institutions compare with other religious institutions?

Mr. Murray. The figures for the last school year for which we have a report, for Roman Catholic schools the total is approximately 4.2 million.

For non-Catholic religiously affiliated schools, it is about a half million.

In other words, there are about seven times more in religiously affiliated schools that are Roman Catholic than in religiously affiliated schools that are other than Catholic.

The Chairman. Are there any other questions?

If not, we thank you again, Mr. Murray.

Mr. Murray. Thank you, sir.

The Chairman. Our next witness is Mr. John J. Gilhooly.

If you will identify yourself for the record, Mr. Gilhooly, we will be glad to recognize you, sir.

STATEMENT OF JOHN J. GILHOOLY, PAST PRESIDENT, CONNECTICUT FEDERATION OF HOME SCHOOL ASSOCIATIONS

Mr. **Gilhooly.** Mr. Chairman and members of the Ways and Means Committee, my name is John J. Gilhooly. I reside in Enfield, Conn.

I am speaking to you as a concerned and interested parent and in behalf of the Connecticut Federation of Home School Associations of which I am past president.

The federation represents 85,000 students, as well as 150,000 parents whose children attend nonpublic schools in the State of Connecticut.

My presentation will take approximately 5 minutes.

I am here today to voice my support for a Federal income tax credit to parents of nonpublic school students. I also urge that every plan for general Federal aid to States include a provision which guarantees nonpublic schools equal participation.

The reason I am supporting Federal income tax credit legislation is twofold: (1) Need for pluralism in education, and (2) parental choice.

The primary responsibility for education rests with the parent. The fundamental expression of such an obligation is the capacity of parents to select the school which they deem best for their child's needs.

When I discuss education, I concern myself with a student's mental development, his or her ability to read, write, to spell, and to do arithmetic problems. I am concerned about a student's moral values, his understanding and grasp for the meaning of life and brotherhood. These are the skills our children need to become good citizens.

Such legislative concepts as separation of church and state mean very little when considering spelling, reading, and arithmetic—yet, this legalistic concept of church and state may be the basis for denying our children the education they need to succeed in life.

During these crucial times when traditional values are under attack it becomes more important than ever that the Federal Government establish a tax-incentive plan that will promote an educational system which teaches moral and spiritual standards.

Certainly present Federal income tax regulations provide incentives for nonpublic institutions such as donations to religions, charities, and educational facilities. The lack of a future tax-credit incentive in behalf of nonpublic school students could discourage private interests and diminish private investors. As a result, parents would be subjected to a monolithic educational system—depriving them of the right to exercise parental choice in the selection of an educational system for their children.

Toleration of mediocrity has sharp limits among those able to make a choice. Patrons of nonpublic schools are fearful that financial difficulties may result in abbreviated academic programs harmful to their children's scholastic progress.

These parents would be revitalized and reassured through tax-credit legislation. This is the time Government can restore parental confidence in a nonpublic system that has for so long served the public need of this Nation.

The religious-oriented school is the only prominent private educational facility remaining in the "inner city." To the poor this Nation is committed and must insist that there be no more closings of inner city nonpublic schools.

This Nation depends on enlightened citizens for its survival. Certainly, nonpublic education provides this enlightenment and adds diversity, choice and a healthy competition to traditional public education.

Let us therefore take a bold and new look at education. Let us provide a tax incentive plan that will assure all students an equal educational opportunity. For if we deprive our children of an equal educational opportunity, we deprive this Nation of important social, economic, scientific and political progress.

Thank you.

The CHAIRMAN. We thank you, sir, for your statement.

Are there any questions?

If not, we thank you, sir.

Our next witness is Mr. John F. W. Koch.

Mr Betts.

Mr. BETTS. Mr. Koch, I understand that Congressman Zion, who is a good friend of yours, wanted to be here and welcome you in person. He regrets that he can't. On his behalf and on the behalf of the committee, I want to assure you that you are certainly welcome. We will listen to your statement with a great deal of interest and will give it every consideration.

STATEMENT OF JOHN F. W. KOCH, EVANSVILLE, IND.

Mr. KOCH. Thank you, Mr. Betts.

Mr. Chairman, before I proceed, I have a question. I have presented a prepared statement. I would like your permission to ad lib some additional comments.

The CHAIRMAN. You have that permission.

Mr. KOCH. I am John F. W. Koch, and I reside at 4000 North Green River Road, Evansville, Ind. I have been married for 22 years and am the father of two adopted children, John F. W. Koch II, age 19, and Amy Jo Koch, age 16. I appreciate the opportunity at this time from the grassroots level to present my views on tax-credit legislation for primary and secondary education before this committee.

To indicate my support of public education, I feel you should be aware of my activity with regard to public school support. I have just concluded a 3-year term as a director of the Purdue Alumni Association representing some 100,000 graduates of that great university. I am currently a member of the State advisory committee of Vincennes University. I have in addition to that taught night classes in vocational training courses in the vocational high school in Evansville, and I have also assisted for many years in counseling high school students interested in the engineering profession.

My other extracurricular activities include those as a member of the Indiana District Board of Parish Education of the Lutheran Church, Missouri Synod, and I currently serve as chairman of the Lutheran School Association of Evansville, Ind. which operates the Evansville Lutheran School.

My children have attended the nonpublic primary and secondary schools for all but the first 2 years of high school for my son and the seventh grade for my daughter. Their attendance at each school ha meant a considerable monetary sacrifice to the family as well as adding hours for transportation and after-hour activities to the family schedule.

As a family, we have been fortunate enough to be able to meet the increasing financial demands and to take an active interest in school activities. There are those, however, with whom I am personally acquainted that have been forced in recent years to abandon their desire for nonpublic schooling for their children because of the rising cost of nonpublic education and added taxes to support the public education system.

Continued matriculation from the non-public-school system to the public school system is, in my opinion, a most frustrating factor to the parents referenced above. For the most part, these parents have a tradition of desiring non-public-school education for their children because of religious or other beliefs, and to see this taken from them because of their inability to bear the financial burden does in effect remove their freedom of choice of education. It further leaves the stigma that these schools are only available for the children of the wealthy. This is not as it should be.

My experience with the nonpublic school during the past 13 years as well as during my attendance for 8 years in a nonpublic parochial school has been that these schools definitely serve a purpose in the community. All nonpublic schools of my acquaintance are fully accredited and do a most effective job at teaching children mathematics, languages, the arts, social studies, music, citizenship, and, perhaps most important, discipline and respect for faculty members as well as the community. They do definitely compare favorably in these respects with most of the schools in the public system.

My experience has further shown that a non-public-school pupil performs in the regularly required subjects beyond the recognized national norms; that graduates of nonpublic secondary schools proportionately go on to higher education than any other group in the Nation; that non-public-school graduates at the completion of their education move readily into our religiously and racially pluralistic society and hold favorable attitudes toward those of different ethnic and religious backgrounds; and further that graduates of nonpublic schools serve in all fields of endeavor in our American life and make substantial contributions in all professions, including public education and other governmental programs.

We have been particularly pleased with the nonpublic education given our children. We have found the teachers whose salaries are without exception below the average of the public system have taken an intense and personal interest in their pupils and are not hesitant to discipline when discipline is necessary. We have considered this quality education to be an indispensable ingredient for achieving the kind of citizenry we expect of our own children as well as those attending our nonpublic schools. I have always felt that our parochial school, in addition to performing its sectarian function, has done an extremely efficient job of performing its task of secular education.

The tradition of the nonpublic school has always been one of frugal self-sufficiency. I, personally, do not care to see this tradition abandoned. Any observer that may visit a nonpublic school cannot help but note the intense economies practiced in an effort to stay in service. There are indeed areas where public school officials could take note and profit from studies in this regard.

In this respect as a businessman I feel that conditions that exist as we see them coming to be today, without support for our nonpublic schools, could indeed lead into an education monopoly, and we feel that there is no room for this type monopoly in our school system. Our business community has today thrived on competition, and we can maintain that same healthy competition in our education community with assistance such as tax credit for all or a portion of the tuition paid accredited nonpublic elementary and secondary education.

In conclusion, I feel that nonpublic education is a factor of basic importance to the economy of many areas of our country and to the educational future of those areas. I also feel that continued reduction in the number of nonpublic schools will eventually present an economic hardship to the public schools and also that the nonpublic education which has for decades borne the burden of service to the total public cannot much longer continue to meet the cost of this service in spite of any desires or sacrifices on the part of the participating parents and supporters.

I believe a solution to this educational crisis is to afford nonpublic education a measure of support—that support being within the strict constitutional limitations sufficient to enable it to continue to render its public service. The support I speak to is that presented to this committee in the form of bills authored by the Honorable John W. Byrnes and Gerald R. Ford, or that of Congressman Carey as submitted in his H.R. 16141.

Again, I appreciate having had the opportunity to present my personal views on this subject.

The CHAIRMAN. We thank you, Mr. Koch, for bringing those views to the committee.

Are there any questions of Mr. Koch?

If not, again we thank you, sir.

We have our colleague, the Honorable Roman C. Pucinski, with us this morning. Mr. Pucinski, you are recognized.

STATEMENT OF HON. ROMAN C. PUCINSKI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. PUCINSKI. Thank you, Mr. Chairman.

Mr. Chairman, I appreciate the opportunity to appear before the committee. I will try to be as brief as I can.

I would like to present to the committee some 100,000 signatures on petitions that have been circulated throughout the State of Illinois in support of the legislation before the committee. This is just the beginning. We probably have another 100,000 that we have not had a chance to open up yet.

I am sure that before everyone has responded there will be substantially more. These are petitions that have been signed throughout the State of Illinois in support of the concept of a tax credit for payments paid to a private school.

As chairman of the House Subcommittee on General Education, I have been deeply concerned with this entire problem. I am pleased to note that one of our colleagues on the committee, Mr. Carey, is now a member of this distinguished committee and has brought his expertise and know-how from our committee to the Ways and Means Committee.

There are 4.5 million children attending private schools in America. If these schools were to, for whatever reasons, close down, local schools boards would have to raise an additional $5 billion of operating revenue to absorb the youngsters from the private school sector, and this is for operating costs alone. It is estimated it would take another $3.5 billion to $4 billion of capital investments. So there is no question that the parents who send their children to private schools are relieving local taxing bodies of a great cost and great responsibility.

We in our committee have studied this matter very carefully from all aspects. I am convinced that the most recent Supreme Court decisions dealing particularly with excessive involvement preclude any direct assistance to private schools, particularly church-related schools. However, I do believe that the proposal before the committee allowing a tax credit of up to $200 per year to parents who pay tuition to private schools avoid any excessive involvement regarding the separation of church and state.

We have a number of programs of direct Federal assistance to individuals which have been upheld by the courts. For that reason it would seem to me that this is legislation that ought to be adopted, ought to be enacted.

It would be my hope that the committee would see fit to report this bill out before Congress adjourns and hopefully make it applicable to the 1972 taxable year.

I want to thank the chairman and his colleagues for permitting me to appear before the committee. We will deliver all the petitions to the committee when we have concluded processing them and opening up our mail. I must say, Mr. Chairman, in my experience in all the years I have been in Congress I have never seen a more enthusiastic response to any piece of legislation than I have to this particular legislation.

As previous witnesses have stated, the parents who send their children to these schools are carrying a double burden. They pay real estate taxes to maintain the public school system and they do it understanding that we need a public school system. They also send their youngsters to private schools. I don't believe that the approach before this committee will in any way conflict with all the programs that we have to improve the quality of education in our public school system.

I think that this approach guarantees that there will be no public money diverted from the public school system or any other source. This has been the primary concern of our public school administrators, and perhaps properly so, because they are beleaguered and they are having difficulty staying in business.

It seems to me that this approach, therefore, assures there will be no diminution and deletion of funds from the public school sector in their tremendous need to stay in business. I want to thank the chairman for his courtesy.

The Chairman. We want to thank you for bringing to the committee the petitions to which you have referred and also your statement. Are there any questions of Mr. Pucinski?

Mr. Pucinski. I might say, Mr. Chairman, that I erred. I overlooked the fact that you have two former members of the Education Committee on this very distinguished committee—Mr. Carey and Mr. Gibbons, of Florida.

The Chairman. Mr. Burke.

Mr. Burke. I wish to commend you on your statement, Mr. Pucinski. Have all these petitions been signed by the people in the State of Illinois?

Mr. Pucinski. They were signed by people in the State of Illinois. The interesting thing is that they represent perhaps as good a cross-section of the State as you will find anyplace. I was really astounded at the response we received from practically every community in the State.

Mr. Burke. I would like to inform you that I have received over 10,000 unsolicited letters on this subject from residents of the Commonwealth of Massachusetts. All these were voluntarily sent in by people supporting this legislation.

Thank you.

The Chairman. Are there any further questions?

Mr. Gibbons. Mr. Chairman?

The Chairman. Mr. Gibbons.

Mr. Gibbons. Mr. Chairman, I appreciate Mr. Pucinski's coming here. I wish him good luck in his election this year. I will say as one member we are going to miss him here in the House. He has done an excellent job over in the Education and Labor Committee, particularly in his special field of education.

We welcome you here, and I commend you for the fine work you have done in education.

Mr. Pucinski. Thank you very much.

The Chairman. Are there any further questions?

Mr. Carey. Mr. Chairman.

The Chairman. Mr. Carey.

Mr. Carey. I want to take this opportunity to renew my message of friendship with my former chairman. I served as a member of the General Subcommittee on Education and under the distinguished leadership of Mr. Pucinski in the Labor and Education Committee. I know of no Member of Congress who has a greater depth and sense of dedication to all the children of our country and their educational needs than Mr. Pucinski.

I also know of your great anxiety about the cost of educating children for the vast number of families of modest means in the country. One of the aims of this bill is to provide a way in which we could make less use of the real property tax in financing education. Isn't it true that the use of the homeowner's real property taxes for education fall very heavily on those who are least able to bear the burden, and that by passing a bill of this kind we would take some pressure off the real estate and property owners and their families?

I think you addressed yourself to that in a recent statement. Isn't it true that this is one of the things you seek?

Mr. Pucinski. That is exactly correct. Every study we have made before my committee clearly indicates that the real estate taxes can no longer absorb the cost of public education. They have reached a point of confiscation. This is why you are finding bond issues being defeated all over the country because the real estate tax has been carrying a disproportionate share of the burden.

Mr. Carey. I certainly hope you can carry that message to the U.S. Senate with you. It is good to see you today.

Mr. Pucinski. Thank you very much.

The Chairman. Again, we thank you very much, Mr. Pucinski, for appearing this morning.

Without objection the committee adjourns until 10 o'clock in the morning.

(Whereupon, at 11:45 a.m., the committee adjourned, to reconvene at 10 a.m., Thursday, September 7, 1972.)

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TAX CREDITS FOR NONPUBLIC EDUCATION

HEARINGS

BEFORE THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

NINETY-SECOND CONGRESS

SECOND SESSION

ON

H.R. 16141 and Other Pending Proposals

RELATING TO AID TO PRIMARY AND SECONDARY EDUCATION
IN THE FORM OF TAX CREDITS AND/OR DEDUCTIONS

AUGUST 14, 15, 16, 17, 18; SEPTEMBER 5, 6, AND 7, 1972

Part 3 of 3 Parts

(September 7, 1972)

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TAX CREDITS FOR NONPUBLIC EDUCATION

THURSDAY, SEPTEMBER 7, 1972

House of Representatives,
Committee on Ways and Means,
Washington, D.C.

The committee met at 10 a.m., pursuant to notice, in the committee room, Longworth House Office Building, Hon. Wilbur D. Mills (chairman of the committee) presiding.

The Chairman. Our first witness this morning is His Eminence Terence Cardinal Cooke.

We appreciate so much having you with us this morning, and you are accompanied by Bishop McManus, and, if you will identify the others, we will appreciate it.

STATEMENT OF TERENCE CARDINAL COOKE, ARCHBISHOP OF NEW YORK; ACCOMPANIED BY BISHOP WILLIAM McMANUS, SECRETARY OF EDUCATION, ARCHDIOCESE OF CHICAGO, AND CHAIRMAN, COMMITTEE ON EDUCATION, U.S. CATHOLIC CONFERENCE; ALFRED SCANLAN, WASHINGTON; LAWRENCE X. CUSACK, NEW YORK; AND MONSIGNOR JOSEPH O'KEEFE, NEW YORK

Cardinal Cooke. Thank you very much.

I am accompanied by Bishop McManus, who is the chairman of the Committee on Education of the U.S. Catholic Conference and also director of education in the Archdiocese of Chicago.

Also with me is Mr. Alfred Scanlan of Washington, distinguished Washington attorney; Mr. Cusack of New York, a distinguished attorney; and Monsignor Joseph O'Keefe, secretary of education of our archdiocese.

The Chairman. We appreciate having all of you with us this morning.

You are recognized, and you may proceed in your own way.

Cardinal Cooke. Mr. Chairman and members of the committee: I am Cardinal Cooke, and I am archbishop of the Catholic Archdiocese of New York and a member of the executive committee of the U.S. Catholic Conference. The U.S. Catholic Conference is the agency of the Catholic bishops of the United States which represents the religious, educational, and social services the church provides for the 48 million Catholics in our country.

I am here to speak in support of the proposals pending before your committee to provide Federal income tax credits to parents who pay tuition for their children in private, nonprofit schools.

I am accompanied this morning by Bishop William McManus of Chicago; Mr. Alfred Scanlan of Washington; and Mr. Lawrence X. Cusack and Monsignor Joseph O'Keefe of New York.

Bishop McManus is the director of education of the Catholic archdiocese of Chicago and also serves as chairman of the committee on education of the U.S. Catholic Conference. Mr. Scanlan and Mr. Cusack are distinguished attorneys who bring special expertise to the consideration of this important issue. Monsignor O'Keefe is the secretary of education of the archdiocese of New York.

I want to take this opportunity to thank the committee and, in particular, its chairman, for permitting us to present our views on the pending tax credit legislation. I hope that what I have to say here today will be of assistance to the committee in its consideration of the development of a tax law which will benefit parents in exercising their free choice in the education of their children.

I particularly wish to express gratitude for the strong support which members of this committee have indicated for the concept of tax relief for parents. The urgency of the problem is reflected in the prompt consideration you have afforded us to speak on behalf of these parents.

In making this statement this morning, I am familiar, to a large extent, with the prior testimony that has been presented to your committee, and especially with the testimony of Rabbi Morris Scherer on behalf of the national organization known as CREDIT and by the nonpublic school official associated with CREDIT.

Both the Division of Elementary and Secondary Education of the U.S. Catholic Conference and the National Catholic Education Association were associated with the very able presentation by Rabbi Scherer.

I make a point of our relationship with the other agencies which sponsor nonpublic education to emphasize the fact that this is not only a Catholic issue.

Although my testimony, and the statement of the U.S. Catholic Conference are mainly concerned with Catholic education, I believe it is important for us to keep in mind the facts regarding the far-reaching dimension of that part of the nonpublic educational effort in the United States which is sponsored by other religious groups.

These groups and other nondenominational groups sponsor schools which educate more than 1 million of the more than 5 million children attending nonpublic elementary and secondary schools. I mention this because I believe that all too frequently there is a tendency to forget these children when the question of nonpublic education is under discussion. Too often courts, as well as legislative bodies, tend to look upon the question of government aid to the parents of these children as a matter primarily of Catholic concern. This is perhaps inevitable because of the size of the Catholic educational system in the United States. It is, indeed, the largest nonpublic school system, educating some 4 million elementary and secondary pupils.

However, in the real sense, this is not a Catholic problem nor even a nonpublic education problem—rather, it is a challenging community and national problem. In our democratic tradition, the education of every child is necessarily the concern of every citizen.

A special dimension of the question before you is the total community interest in the preservation of nonpublic education. Nonpublic education provides a strong pluralism in education which benefits public education. When nonpublic schools are forced to close the adverse effects upon the total community are not only economic but social.

This is already a fact experienced in some communities in the last few years. Surely we are not unaware or unsympathetic to the serious plight of our public schools in many areas of the Nation, but in view of the educational situation as it exists today, the good of the public school system in America would not be served by the destruction of our private sector which today cares for the education of so many young Americans.

Therefore, we are challenged today in America to find a way, in the public interest, to preserve the freedom of choice which the Supreme Court has guaranteed to parents in the landmark case of *Pierce* v. *The Society of Sisters*.

Mr. Chairman, I ask permission to submit for the record of this committee a detailed statement concerning the proposed legislation which is the subject of these hearings.

The CHAIRMAN. Without objection, that statement will appear at the conclusion of your oral statement.

Cardinal COOKE. Thank you, Mr. Chairman.

This statement is submitted on behalf of the United States Catholic Conference. It consists of four parts and, with your indulgence, I would like to call attention to its main points and to add what I may be able to contribute to your consideration of this important national question.

Bishop McManus, Mr. Scanlan, Mr. Cusack, Monsignor O'Keefe, and I would be pleased to answer any questions which members of this committee might have and to submit additional information which may assist you in your deliberations.

The first part of the statement concerns the dimensions of the Catholic educational effort throughout the United States. A total of 4,022,508 children attended 10,829 Catholic elementary and secondary schools in the 1971–72 school year in this country.

Although non-public-school enrollments are concentrated in eight of the Nation's most urbanized and industrialized States—New York, Pennsylvania, Illinois, California, Ohio, New Jersey, Michigan, and Massachusetts—nevertheless there are Catholic schools in every State of the Union serving the children of almost 2 million American parents.

In New York City and State, with which I am, of course, most familiar, the statistics are impressive. Today, one out of every four schoolchildren in New York City attends a nonpublic school, and in the entire State these schools educate more than 700,000 pupils.

In New York City, our Catholic schools alone educate some 300,000 students—more than are educated by any urban public school system in America, excepting the public school system of New York City, itself, Los Angeles and Chicago. Nonpublic schools in New York State educate more young people than do the public schools in any of 28 States of the Union.

A dramatic example of the great role that nonpublic education plays and has played in America is illustrated in some of our cities in New York State where over 50 percent of the schoolchildren attend nonpublic schools.

It does not require a slide rule or computer to estimate the great burden which would fall upon the public schools and the taxpayers of these cities if parents of nonpublic schoolchildren were compelled to transfer their children to public schools. The recent report of the President's Commission on School Finance focused upon the effect on public schools and taxpayers if nonpublic schools were to close:

> Depending on the rate of closings and the size of public school classrooms that would be tolerated by various communities, the total increases in public school operating costs might run from as low as about $1.3 billion to as high as $3.2 billion, and the cost of building new facilities would range from $4.7 billion to just short of $10 billion. Some 70 percent of these total costs would be borne by seven States—California, Illinois, Michigan, New Jersey, New York, Ohio and Pennsylvania—because they have the greatest concentrations of nonpublic students and the highest costs of public education and because their public school enrollments are not falling as rapidly as those in other areas (page 55).

The second part of our statement has to do with the national interest and how our Nation benefits from the work of nonpublic education.

We believe most sincerely that nonpublic education is good for the young people and good for the Nation. Individuals, families, local communities, the whole Nation profit from the instruction of children and young adults in the importance of a religious outlook on life that fosters love, honesty, and just dealings with their neighbors.

Treasury Secretary Shultz summarized before this committee the impact of the nonpublic schools on the national interest when he said:

> We believe that the existing system of nonpublic schools, which educates a tenth of our children, is a vital national asset. The non-public school system provides a diversity which is healthy. It provides, in many instances, a proving ground for innovation and experimentation which is of great benefit to public education and the public generally. Large-scale closings of non-public schools, if allowed to continue, could be accompanied by disruption of countless communities and neighborhoods in which non-public schools are sources of pride and stability. We must do all we can to prevent this from happening.

The passage of tax credit legislation which your committee has under consideration is a matter of major importance for the parents of the 4 million children attending Catholic schools and, I believe, for every American, as well. I am concerned, as this committee is, about the future education of these children and the preservation of the freedom of choice of their parents. I am also concerned lest future generations of children may not have the educational opportunity afforded to today's children unless some action is taken by Congress to preserve this great national asset of nonpublic education.

The third section of our statement is devoted to the special service which our schools provide to the children of minority groups in America. It is important that all of us realize that these schools are not "exclusive private schools." It is not now, and never will be, the policy of the Catholic schools of America to create havens for segregation of any kind and our adherence to the civil rights requirements stems from the conviction of moral principles and not just from legal necessity.

A recent survey revealed that 87 percent of the parents of parochial school children in New York City earned less than $10,000 a year, and one-third of these earned less than $5,000. Indeed, it is a fact that one in 10 of these parents lives below the national poverty level.

Our experience in the Archdiocese of New York is a clear testimony to this service of minorities and the poor. In the Bronx and Manhattan, our Catholic schools in the inner city continue to remain today as a singular asset serving the people of our minority communities. New immigrants and disadvantaged families have always been the special concern of parish schools. Today, more than 60 percent of all our elementary school students in Manhattan are black or Spanish speaking; 30 percent of them in the Bronx.

Catholic parents throughout the country are bearing a heavy burden to support their schools. In fact, these parents today bear a twin burden which has become almost insuperable for them. In one way or another, they pay their share of public school taxes and at the same time they struggle to pay increased tuition costs to support the schools attended by their children. It is precisely because Catholic schools have been traditionally dedicated to the education of the poor that today's escalating costs of education have made the burden of our parents so increasingly difficult.

A final part of our statement refers to the constitutionality of the proposed legislation.

American Catholics firmly accept the principle of the separation of church and state as embodied in the great religious clauses of the first amendment. There are ample precedents which experienced constitutional lawyers have cited in advising us that such tax credit proposals do not violate this principle and fall within established constitutional guidelines. The whole history of tax benefits for private voluntary effort through deductions and credits is supportive of these proposals.

Catholic, Protestant and Jewish parents who seek this aid will continue to carry a heavy burden to support the education they choose. They are seeking a reasonable tax credit for the tuition that they pay to give their children the type of education they want. We believe this position is just, that it is in accordance with the Constitution and that, in the final effect, it will be of great benefit to our communities and to our Nation.

We feel that a tax credit for tuition paid would be an assurance to the parents of the children in nonpublic schools all over America that their basic freedom to chose the education of their youngsters will be preserved.

We support the concept that those low-income parents who do not pay sufficient taxes to enjoy the full benefit of the credit should receive assistance. These families are our special concern and we urge that any overall plan should assist these poorer parents to exercise their right to freedom of choice which they have as citizens of this great Nation.

Nonpublic schools have always been part of the great heritage of America. From the earliest days of our Nation, they have rendered a unique and tremendous service. How many of the leaders of this country have learned in these schools the lessons of citizenship, of brotherhood and of patriotism that enabled them to move forward to accomplish great things not only for God but also for their countrymen and for this great Nation.

The contribution of the American Catholic education system has not been merely in the area of economy. Although it has saved the American taxpayer billions upon billions of dollars, this is not, and never could be, its greatest contribution. Its great contribution is in the fostering of a true and worthwhile pluralism. Its great contribution is in the development of citizens with a strong sense of values. Its great contribution is in providing to a large segment of the American population a spirit that goes beyond the natural, a spirit that goes beyond the material, a spirit that goes beyond the purely secular and rings out across this land with an appreciation of the very principles which our forefathers enshrined in the Declaration of Independence and in the Constitution of our Nation.

(The statement referred to follows:)

Statement of the United States Catholic Conference Regarding Proposed Tax Credit Legislation

DIMENSIONS OF THE CATHOLIC SCHOOL EFFORT

In the 1971–72 school year there were 10,829 Catholic elementary and secondary schools in the United States. Almost two million parents sent 4,022,508 children to these schools, where they were taught by more than 158,000 full-time teachers. Although their enrollment has dropped more than 1.5 million since the 1964–65 school year (when it reached the peak level of 5.6 million), Catholic schools continue to enroll about 81% of the more than five million nonpublic school students in the nation.

Nonpublic school enrollment is concentrated in eight of the nation's most populous states: New York, Pennsylvania, Illinois, California, Ohio, New Jersey, Michigan, and Massachusetts. Eighty-three percent of such enrollment is found in metropolitan areas. In the nation's 20 largest cities, nearly two out of five school children are enrolled in nonpublic schools.

Ideologically and historically, the Catholic school is committed to the inner city. Consistent with this commitment, Catholic inner-city schools have not closed at a more rapid rate than Catholic urban, suburban, and rural schools. In 1970–71 black and Spanish-speaking pupils constituted 40% of the Catholic inner-city school enrollment. Thirty-five percent of the black students in these inner-city schools were non-Catholic.

In 1970, 46% or 4, 117 of the Catholic elementary schools were located in urban and inner-city areas. These schools were attended by 50% of the total Catholic elementary school enrollment of 1.7 million students. Twenty-nine percent of Catholic elementary schools were located in small town and rural areas and were attended by 19.8% of Catholic elementary school students.

ELEMENTARY

[Amount in percent]

	Location		Enrollment 1970-71
	1969-70	1970-71	
Urban	30.9	33.0	38.8
Inner city	14.6	13.3	11.6
Suburban	26.3	24.4	29.7
Small town or rural	28.2	29.3	19.8

At the secondary level in 1970–71, 54.2% or 1,072 Catholic secondary schools were located in urban and inner-city areas. Almost 60% or 605,080 of the Catholic secondary school students attended these schools. In 1970, 20.3% of Catholic secondary schools were located in small town and rural areas and were attended by 10.6% of Catholic secondary school students.

SECONDARY

[Amount in percent]

	Location		Enrollment 1970-71
	1969-70	1970-71	
Urban	39.2	43.8	49.5
Inner city	12.4	10.4	10.3
Suburban	27.7	25.5	29.6
Small town or rural	20.7	20.3	10.6

The area of finances is the focal point of the various elements of the Catholic school crisis. Catholic elementary and secondary schools presently fall into three basic financial patterns. The 1970-71 funding patterns for these schools follow. Elementary schools are parish schools funded by parish subsidies (60%), tuition and fees (32%), and miscellaneous other income (8%). There are three types of Catholic high schools—parish, diocesan and private. Parish and diocesan high schools are funded by tuition and fees (61%), parish or diocesan subsidies (27%), and miscellaneous other income (12%), Private religious community high schools are funded by tuition and fees (80%), and all other income (20%).

In terms of national averages, the 1970-71 budgets for Catholic elementary schools projected a 17.5% increase over 1969-70. Current figures indicate not only that this 1970-71 increase did take place, but that a 30% increase was projected for the 1971-72 school year.

The estimated per-pupil cost for Catholic elementary schools in 1970-71 was $239; in 1971-72, $268, an increase of 12.1%. The estimated per-pupil cost for diocesan or parish high schools in 1970-71 was $490; in 1971-72, $531, an increase of 8.4%. For 1970-71 the estimated per-pupil cost for private high schools was $589; in 1971-72, $669, an increase of 13.5%. Subsidies, from either the parish, the diocese, or the religious community, must make up the difference between tuition and per-pupil costs. As in the public sector. Catholic school costs are increasing faster than is income.

Traditionally, Catholic elementary schools have charged very low tuitions, preferring to balance their budget with parish funds. However, this is changing drastically. For example, in 1970-71 about 71% of the elementary schools charged tuitions of less than $100, but during 1971-72 about 56% were charging between $100 and $300. This trend will continue and accelerate.

In 1970-71 high school tuition charges averaged $243 per pupil in diocesan or parish high schools and $436 per pupil in private high schools. In recent years parish and diocesan high school tuition has risen an average of 22% yearly and private schools have increased their charges about 12%-14% yearly.

CATHOLIC SCHOOLS AND THE NATIONAL INTEREST

An enterprise which serves the national interest can legitimately be the object of public concern and appropriate forms of government assistance. This is a basic element of the rationale for government assistance to the supporters of nonpublic schools, including those under Catholic sponsorship. That Catholic schools do serve the national interest is apparent from a number of considerations.

1. *Catholic schools provide quality education in secular fields of study, thus equipping their four million students with the knowledge and skills to contribute productively to the nation's economic, social, cultural and political life.* The academic quality of the secular education offered in Catholic schools is attested to by the fact that attendance at these institutions universally satisfies the requirement of compulsory school attendance laws. Numerous independent sources testify to the quality of the secular education available in Catholic and other nonpublic schools; and the statement of the United States Supreme Court in 1968 speaks for many: ". . . a wide segment of informed opinion, legislative and otherwise, has found that those schools do an acceptable job of providing secular education to their students . . . parochial schools are performing, in addition to their sectarian function, the task of secular education." (Justice Byron White in *Board of Education* vs. *Allen*/392 U.S. 236/)

2. Catholic schools render a significant service in educating the poor and disadvantaged. Studies document this service. (Cf. *Nonpublic Education and the Public Good*, page 9) A research study in Michigan found "more evidence of equality of opportunity in the church-related than in the public schools." A

similar study in Chicago found that Catholic schools "were not, as had been charged, filtering off the most intelligent students in each area and leaving the dregs in the public schools. In fact, the Catholic school IQ's fell farther behind the public school IQ's in poor neighborhoods than in wealthy neighborhoods." It was also demonstrated that in Chicago "dollar out lays for instruction by the Catholic schools were more evenly distributed across neighborhoods of varying wealth than was the case with the public schools."

Non-white enrollment in Catholic schools is not particularly high, but neither is it particularly low. In 1970, 46% of the Catholic elementary schools and 54.2% of the Catholic secondary schools were located in urban and inner-city areas. Black and Spanish-speaking students made up 40% of the enrollment in Catholic inner-city schools; 35% of the black students were non-Catholics. As for overall Catholic school enrollment, statistics compiled by the National Catholic Educational Association show that in the 1970–71 school year black students made up 5.1% of the total enrollment in Catholic elementary schools, Spanish students 5.2%, and Indian students .5% (a cumulative total of 10.8%). On the secondary level, the figures were: black 3.7%, Spanish, 3.5%, and Indian, .2% (cumulatively, 7.4%). In 1967, 14.3% of Catholic elementary schools were located in the inner city; in 1968, 14.4%; in 1969, 14.6%; and in 1970, 13.3%. On the secondary level, the figures are: 1967, 12.9%; 1968, 12.7%; 1969, 12.4%; and 1970, 10.4%. These figures suggest that Catholic schools are making a commendable effort, in face of major economic problems (increased costs, decreased parish revenues, poverty of the inner-city population, population shifts, etc.), to include a significant number of non-white enrollees among their students and to remain open in inner-city areas. They also indicate that a significant number of non-white parents have freely chosen these schools as the instrument for the formal education of their children. It is highly questionable, however, whether either the schools or the parents can long continue this effort, in face of rapidly rising educational costs, without assistance from public sources.

3. *In major urban areas, Catholic schools are a force for population stabilization as well as for neighborhood and school integration.* In the 20 largest cities of the nation, nonpublic schools enroll nearly two out of every five children. While it would perhaps be overstating the case to claim that access to a Catholic school is the decisive factor holding white families in center-city areas, nevertheless it is correct to say that "in changing neighborhoods of such cities exist balances so delicate that access to a school of choice affects a decision to move or stay." (*Nonpublic Education and the Public Good*, page 18) If, then, urban Catholic schools in increasing numbers close their doors in the future, this can only encourage the flight of whites from center cities to suburban areas and further increase a variety of urban ills, including the polarization already apparent in many American urban areas between "black" center cities and "white" suburbs.

4. *The continued existence of Catholic schools constitutes a significant brake on rising taxpayers costs for public education.* It has been estimated that the cost to the taxpayer resulting from transfer of all nonpublic school students to public schools might be on the order of $7.4 billion. (*Nonpublic Education and the Public Good*, pp. 19–20) Recently this conclusion has been questioned on grounds that declining birth rates have relieved the pressures on the nation's public schools and made it possible for them to absorb an influx of nonpublic school students without drastic cost increases or other strains. This ignores, however, the crucial fact that nonpublic school enrollment is not spread evenly over the country but is instead concentrated in certain areas. In the hypothetical case of a total closing of all nonpublic schools, seven large-population industrial states—New York, Pennsylvania, Illinois, New Jersey, California, Ohio, and Michigan— would be required to absorb an estimated 73.2% of the total marginal current operating costs involved in transferring nonpublic school pupils to public schools. Furthermore, central cities would experience higher marginal operational costs than either suburban or rural areas. Even taking into account those states that have relatively few nonpublic school students, approximately 59% of the marginal costs would be concentrated in the nation's urban areas. In this situation, the estimated increase in total marginal costs for current operation incurred by the nation's public schools would be $1.2 billion. While closing of nonpublic schools might create few problems for public schools and taxpayers in areas of the country where nonpublic school enrollment is relatively low, it would create major difficulties in the populous states where this enrollment is extremely high as a proportion of total school enrollment.

5. *In the realm of elan and morale, Catholic schools contribute to the total American educational enterprise in many ways.* Numerically, at least, they constitute the only

significant "competition" for public education; although this is not "competition" in the sense of antagonism or destructive rivalry, but rather in the sense of two systems each of which is kept on its toes, professionally speaking, by the existence of the other. Lacking a large centralized bureaucracy and similar inhibiting factors, the Catholic school system is also able to innovate with relative freedom and thus serve as a testing ground for new educational approaches. All this reflects in the field of education the American free enterprise system which is based on the fact that product and performance are enhanced, not hampered, by competition and that the best interests of the public are served in this way. Such educational pluralism represents a significant national resource whose loss, through the closing of nonpublic schools, would be detrimental not only to present and potential patrons of the nonpublic schools but to our entire society.

6. Finally, Catholic schools serve the national interest by making viable and operative the right of parental freedom of choice, under law, in education. There is no gain saying the fact that the parents of four million elementary and secondary school students in the United States now freely elect to send their children to these schools, in many cases at major financial sacrifice to themselves. As government assists citizens to satisfy their needs and aspirations in many other areas of life, so it is appropriate that it assist these parents by appropriate means to continue to act upon their convictions and commitments regarding the schooling of their children. National endorsement of the principle of freedom of choice, under law, in education rings hollowly when it is not accompanied by specific, legitimate action on the part of government to enable citizens to act upon that freedom. The situation takes on added urgency in light of the fact that citizens who elect to support Catholic schools are also required to support public schools with their taxes, thus incurring a double burden of educational cost. Such parents do not seek to be excused from their responsibility for financial support of public education, nor are they seeking governmental assistance for more than a portion of their expenses in connection with sending their children to nonpublic schools. They do, however, look to their government for at least a modicum of assistance to enable them to choose for their children the form of schooling they prefer. By assisting them in this way, government will be an enabler and collaborator with them in the exercise of one of this nation s most cherished freedoms—free choice, under law, in education.

CATHOLIC SCHOOLS AND MINORITY EDUCATION

Catholic schools have a historical commitment to the education of ethnic and racial minorities. They have provided schooling of satisfactory academic quality for generations of Irish, Italians, Poles, Hispanic American, blacks, and others, in both rural and urban America. In spite of the small number of black Americans who are members of the Catholic church (less than 2% according to a 1969 study), black students made up 5.2% of the enrollment in Catholic elementary schools in 1970–71 and 3.7% of the enrollment in Catholic secondary schools. More than a third of the black elementary school students were non-Catholic (compared with only 1.7% of the white elementary students); at the high school level, 23.3% of the black students were not Catholics (compared with 2.3% of the white students). Among other things, these figures testify to the fact that significant numbers of black parents, including many who are not Catholics, elect to exercise their educational freedom of choice by sending their children to Catholic schools.

In the area of formal policy, the Catholic bishops of the United States have over the years issued a number of significant statements concerning civil rights and racial equality, even at a time when such affirmations were less common that they are today. In their historic Joint Pastoral of 1919, they declared that "in the eyes of the Church there is no distinction of race" and went on to urge special efforts on behalf of the black people of the United States, particularly in education: "We concur in the belief that education is the practical means of bettering their condition; and we emphasize the need of combining moral and religious training with the instruction that is given them in other branches of knowledge." In another statement looking to social reconstruction following another war (*Essentials of a Good Peace*, 1943), the bishops devoted a special section to the "Constitutional Rights of the Black Man." Declaring the black Americans should "have in fact the rights that are given them in our Constitution," they said: "This means not only political equality, but also fair economic and educational opportunities, a just share in public welfare projects, good housing without exploitation, and a full chance for the social advancement of their race."

Similiar declarations were made by the bishops throughout the 1950's and 1960's, as the civil rights movement progressed. In 1958 they published *Discrimination and the Christian Conscience* in which they denounced legal segregation on the basis of race and condemned racism in all its forms. This document insisted that black people in America are entitled to their civil rights as American citizens and that "no one who truly loves God's children will deny them this opportunity."

Five years later, in 1963, the bishops issued both a statement, *Bond of Union*, and a pastoral letter, *On Racial Harmony*. In the latter they specifically committed to "do our part to see that voting, jobs, housing, education and public facilities are freely available to every American."

In 1966 they issued a pastoral statement, *On Race Relations and Poverty*, urging action on behalf of the poor, "particularly . . . those who have felt the heavy burden of discrimination."

In 1968, responding to the Report of the National Advisory Commission on Civil Disorders, the bishops issued a *Statement on National Race Crisis*. Here they reaffirmed their commitment and that of Catholic schools to quality education for poor as a "moral imperative":

> Education is a basic need in our society, yet the schooling available to the poor is pitifully inadequate. We cannot break the vicious cycle of poverty producing poverty unless we achieve a breakthrough in our educational system. Quality education for the poor, and especially for minorities who are traditionally victims of discrimination, is a moral imperative if we are to give millions a realistic chance to achieve basic human dignity. Catholic school systems, at all levels, must redouble their efforts, in the face of changing social patterns and despite their own multiple problems, to meet the current social crisis.

At that time the bishops also initiated an action program to develop human relations materials for use in classrooms and other teaching vehicles.

At their meeting in November, 1969, the bishops inaugurated the "Campaign for Human Development," a major domestic self-help anti-poverty program. In two annual national collections conducted in Catholic dioceses and parishes since then, $15.5 million has been raised for distribution to community-based groups seeking to help the poor help themselves. The Campaign also includes an educational component as a major priority of its efforts. Its goals are: to develop amoung American Catholics a new understanding of the problems of poverty and social conflict; to develop among American Catholics a perception of new approaches to the solution of these problems; and to promote a greater spirit of solidarity across socioeconomic lines and among different racial-ethnic groups. Catholic schools throughout the country have participated actively in the "Campaign" program.

Virtually every archdiocese and diocese in the country has also adopted and implemented policies in the areas of racial justice, school integration, and intergroup understanding. Particularly significant, in light of problems encountered by public education in many parts of the country in responding to court-ordered desegregation, has been the supportive position of the Catholic schools, which have repeatedly refused to let themselves be used as havens by persons seeking to avoid public school integration. The following instances are cited simply as examples.

In January, 1970, the archdiocese of Atlanta, Georgia, issued a policy statement which supported efforts of the Atlanta public schools to carry out court-ordered integration of its schools and facilities. The archdiocese moved to block transfers of students from public to Catholic schools, in order to avoid racial integration, by "closing enrollment at all schools within the archdiocese. . . for the present time" to all new students except those whose parents had recently changed their place of residence.

The dioceses of Birmingham and Mobile, Alabama, issued a joint statement in January, 1970, in which they reiterated the policy that all diocesan schools must be integrated and Catholic school officials "must refuse admittance to anyone who is known to be attempting to circumvent the laws or court orders affecting integration in public schools."

Following the U.S. Supreme Court's decision in the Charlotte, North Carolina case and efforts by the Mobile public schools to implement a court-ordered cross-town busing plan, the diocese of Mobile issued a statement reiterating its January, 1970, policy against accepting transfers of public school students. Bishop John May of Mobile said that "even though technically as private schools the law may not bind us, we prefer not to stick with the letter of the law, but to follow the spirit of the law as announced by the Supreme Court."

In accordance with diocesan policy that its schools must be integrated and must not serve as a refuge for those seeking to avoid integration, the pastor and principal of St. Joseph School in Huntsville, Ala., in August, 1971, nullified the registration of 15 white students upon learning that they lived in an area rezoned under federal court approval and had been assigned to a predominatly black school. Subsequently a circuit court judge, ruling that "contact between parties should be upheld by the court," issued an injunction requiring St. Joseph's to admit the students; but on appeal the Alabama Supreme Court, in January, 1972, overturned the lower court injuction. St. Joseph did not have to admit the students.

After a federal district judge ruled in 1971 that the Detroit public schools were racially segregated, the archdiocese of Detroit banned student transfers to its schools. Enrollments from outside the parish were frozen; enrollment requests from within the parish were to be scrutinized to determine their legitimacy. The archdiocese reiterated its policy on transfers in July, 1972, when 57 southeast Michigan school districts were under a federal court order to implement a large scale busing and school integration program.

The five bishops of Georgia, North Carolina and South Carolina issued a pastoral letter on Catholic education in March, 1972. They declared that "a school that is Catholic and segregated is a lie." Exclusiveness, whether intellecutal, financial or racial, would not be tolerated in Catholic schools. Catholic schools in the South have "long served black children," the statement noted. "Indeed in many cases, it was the Catholic school alone where the black child could find some hope for a measure of education." Noting the unique opportunity of the Catholic school for service, the bishops said Catholic educators must be "vitally concerned that rising costs and an increasing white Catholic population do not make our schools unavailable to black children." The Church should lead in the matter of integration, the statement said, and Catholic schools should not be havens for those who would use them for purposes other than those for which they were founded.

CONSTITUTIONAL CONSIDERATIONS

In analyzing the constitutionality of the tax credit bills before this Committee, a distinction must be made between those that have a "refund feature" and those that do not. It is with the second type (straight tax credit, no refund feature) that we will deal first. Our analysis of this type of tax credit has two stages: the positive case for the constitutionality of the credits and a reply to the principal objections.

THE POSITIVE CONSTITUTIONAL CASE

The positive case for the constitutionality of tax credits for parents who pay tuition at nonpublic schools is clear and compleling. The Internal Revenue Code already contains many provisions for the benefit of parents, students, teachers and educational institutions, public and nonpublic. Perhaps the most striking of these are Section 117 (exclusion of scholarships and fellowship grants), Section 170 (deductibility of contributions), and Section 501(c)(3) (exemption of educational organizations). The long and consistent history of federal tax relief for educational purposes puts the constitutionality of that policy beyond doubt.

Nevertheless, because the vast majority of nonpublic elementary and secondary schools are church-related and Catholic, it is worth considering the bearing of the religion clauses of the First Amendment on the constitutionality of the tax credit bills under consideration by this Committee. Fortunately, the recent, almost unanimous, decision of the United States Supreme Court in *Walz* v. *Tax Commission*, 397 U.S. 664 (1970), provides a clear and authoritative precedent that eliminates all doubt about the constitutional permissibility of tax credit relief for parents of nonpublic school children. If, as the Supreme Court held in *Walz*, a property tax exemption for a parish church does not offend the No Establishment or Free Exercise Clause of the First Amendment, then clearly neither will a property tax exemption for the parish school. The house of worship is wholly religious; yet it may be exempted. The school, as the Supreme Court noted in *Board of Education* v. *Allen*, 392 U.S. 236, 247–48 (1968), provides secular as well as religious education. The school's case for exemption, accordingly, is even stronger than that of the church.

In *Walz*, the Supreme Court laid heavy stress on the antiquity and universality of property tax exemptions for houses of worship. The same antiquity and universality attaches to property tax exemptions for church-related schools. (Virginia statute of 1800.)

Moreover, in *Walz*, the Supreme Court expressly took notice of the exemption that Congress has consistently accorded churches from the income tax. Speaking for the Court, Chief Justice Burger said:

> For so long as federal income taxes have had any potential impact on churches—over 75 years—religious organizations have been expressly exempt from the tax. Such treatment is an 'aid' to churches no more and no less in principle than the real estate exemption granted by States. Few concepts are more deeply embedded in the fabric of our national life, beginning with pre-Revolutionary colonial times, than for the government to exercise at the very least this kind of benevolent neutrality toward churches and religious exercise generally so long as none was favored over others and none suffered interference." (397 U.S. at 677–78)

Manifestly, what the Chief Justice has said for the Court about the constitutionality of the federal income tax exemption for churches applies with even greater force to the federal income tax exemption for church-related schools.

We now come to the final step in the positive argument for the constitutionality of tax credits for parents paying tuition for the education of their children in church-related nonpublic schools. If the school itself can be directly exempted—and we have already shown that it can—then there can be no constitutional infirmity in the fact that the school will be *indirectly* assisted as a result of a tax credit program for parents. The school is barred by the First Amendment from certain types of grants (*Lemon* v. *Kurtzman*, 403 U.S. 602 (1971)) but not from tax exemptions. Since the school is free to enjoy a direct exemption, it is impossible to see why the parents of its students are barred from enjoying a tax credit simply because the school may indirectly benefit.

The *Walz* decision does not, of course, hold that any and all tax exemptions for religious organizations are constitutional. Exemptions that foster excessive entanglement of the government with religious affairs are unconstitutional. In the tax credit bills, however, before this Committee there is no potential for excessive entanglement. The Internal Revenue Service will not have to draw lines between secular and religious instruction. There will be no need for IRS to monitor teachers or classrooms, any more than IRS has to monitor sermons or the confessional.

The *Walz* and *Lemon* decisions, taken together, draw a clear and unmistakable constitutional distinction between tax relief and direct grants. Where the government acts by abstention (through tax exemptions, exclusions, deductions and credits), the fact that the churches benefit substantially in their religious functions from the government's self-imposed restraint raises no constitutional problem. Where, however, the government acts affirmatively to provide funds from the public treasury for educational programs, great care must be taken to ensure the secularity of the educational assistance, and there must be no excessive entanglement of the government with religious affairs. This distinction between exemptions and grants may not commend itself to every logician and economist, but it is the distinction that the Supreme Court has firmly announced and it is solidly grounded in American constitutional history.

In the tax credit bills before this Committee, all parents of nonpublic school children are eligible for the credits, and accordingly all denominations with church-related schools may receive collateral benefits. The fact that some denominations do not have such schools, or that the Roman Catholic Church operates most of the schools presently in existence, is not fatal to the constitutionality of tax credits. The legislation is neutral on its face and openended in its purpose and effect. The constitutionality of tax legislation cannot be made dependent upon the religious affiliation of its actual beneficiaries at any given point of time. To employ such a test would mean that the Internal Revenue Service would have to monitor the religion of every taxpayer in the country.

In summary, therefore, the positive case for the constitutionality of tax credits is as follows:

(1) The Federal interest in the education of all American children amply justifies both direct grants and tax relief for students, parents, teachers, and educational institutions.

(2) With specific reference to tax credits for parents paying tuition in nonpublic church-related schools, the fact that some indirect benefit will accrue to the schools is not constitutionally objectionable because the schools themselves can be, and long have been, direct beneficiaries of tax relief.

REPLY TO THE PRINCIPAL OBJECTIONS

Since, however, some opponents of the tax credit bills before this Committee persist in their contention that the bills violate the No Establishment Clause of the First Amendment, it is necessary to reply to the arguments they make that are based on the Supreme Court's decisions in *Walz* (1970), *Lemon* (1971) and earlier cases. For the last twenty-five years the United States Supreme Court has been endeavoring to develop guidelines for interpreting and applying the somewhat cryptic language of the First Amendment: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The problem of application was stated by Chief Justice Burger in the *Walz* case:

"The Establishment and Free Exercise Clauses of the First Amendment are not the most precisely drawn portions of the Constitution. The sweep of the absolute prohibitions in the Religion Clauses may have been calculated; but the purpose was to state an objective, not to write a statute. In attempting to articulate the scope of the two Religion Clauses, the Court's opinions reflect the limitations inherent in formulating general principles on a case-by-case basis. The considerable internal inconsistency in the opinions of the Court derives from what, in retrospect, may have been too sweeping utterances on aspects of these clauses that seemed clear in relation to the particular cases but have limited meaning as general principles."

"The Court has struggled to find a neutral course between the two Religion Clauses, both of which are cast in absolute terms, and either of which, if expanded to a logical extreme, would tend to clash with the other."

The effort to find a course of constitutional neutrality has resulted in the Supreme Court's formulation of the following tests:

(1) the legislation must have a secular legislative purpose;

(2) it must have a primary effect that neither advances nor inhibits religion; and

(3) it must not foster excessive government entanglement with religious affairs.

Lemon v. *Kurtzman*, 403 U.S. 603, 612–13 (1971). Some opponents of the tax credit bills before this Committee contend that the bills do not satisfy these three tests.

SECULAR PURPOSE

Opponents argue strenuously that the purpose of the bills is to aid religion, and therefore that not even the first test is met. The answer to this conteniion is that the opponents have misunderstood the test. They confuse the collateral benefit that may result to the church-related schools with the purpose of the legislation, which is to provide tax relief for parents who exercise their constitutional right to select a nonpublic school for their children and accordingly lose the direct educational benefits they would otherwise received from state and federal assistance to the public schools.

The Supreme Court has twice sustained the secularity of purpose of legislation that provided benefits to pupils and parents, even though church-related schools received some collateral benefit from the legislation.

In the landmark case of *Everson* v. *Board of Education*, 330 U.S. 1 (1947), the Court upheld a state statute and school board resolution which authorized reimbursement from public funds to parents for the cost of transporting their children to church-related schools. The Court acknowledged that the schools might receive a collateral benefit, but emphasized that the public funds were given to the parents and not to the schools. It was further observed that the statute promoted education and thus satisfied a public purpose.

The next decision of the Supreme Court involving church-related schools was *Board of Education* v. *Allen*, 392 U.S. 236 (1968). The Court on this occasion upheld the constitutionality of a new York statute which required school boards to lend textbooks without charge to students in grades 7 through 12 in all schools of the state, including church-related schools. The majority of the Court, after citing a number of cases beginning with *Pierce* v. *Society of Sisters* (268 U.S. 510 (1925)), which upheld the right of parents to send their children to nonpublic schools, observed that:

"Underlying these cases, and underlying also the legislative judgments that have preceded the court decisions, has been a recognition that private education has played and is playing a significant and valuable role in raising national levels of knowledge, competence, and experience. Americans care about the quality of the secular education available to their children. They have considered high quality education to be an indispensable ingredient for achieving the kind of nation, and the kind of citizenry, that they have desired to create. Considering this attitude, the continued willingness to rely on private school systems, including parochial systems, strongly suggests that a wide segment of informed opinion, legislative and otherwise, has found that those schools do an acceptable job of providing secular education to their students. This judgment is further evidence that parochial schools are performing, in addition the their sectarian function, the task of secular education." 392 U.S. at 247–48.

Having determined that church-related schools perform a substantial secular function, the Court found no difficulty in concluding that the statute satisfied a secular legislative purpose.

The Court also observed that "No funds or books are furnished to parochial schools, and the financial benefit is to parents and children, not to schools." 392 U.S. at 243–44. This decision relies on the parental benefit approach as well as the functional test of no advancement of religion and demonstrates and interrelationship between these two concepts which is instructive in resolving the issue of tax credits. For example, direct aid to the parent or child with collateral benefit to the church-related school has uniformly been upheld by the Supreme Court (*Everson* and *Allen*, supra). In short, collateral benefit to a church-related school does not destroy the secular purpose of legislation for the benefit of pupils and parents. This is true despite the fact that the legislation aids the educational process in a parochial school. *Allen* is authority for this proposition. Certainly, if the collateral benefits which have been the subject of adjudicated cases do not impair the secularity of purpose of the legislation sustained therein, it cannot be persuasively argued that the staying of the taxing power has such an effect. Even in *Lemon* v. *Kurtzman*, supra, in which the Supreme Court struck down the Pennsylvania purchase-of-services statute, the Court held that the purpose of the legislation was secular. 402 U.S. at 613.

PRIMARY "RELIGIOUSLY NEUTRAL" EFFECT

The second test that must be met is that the statute's "principal or primary effect must be one that neither advances nor inhibits religion." *Lemon* v. *Kurtzman*, 403 U.S. at 613. Some opponents of the tax credit bills before this Committee argue that religion so permeates the parochial schools that the primary effect of the legislation would be the advancement of religion. A similar contention was advanced in *Everson* v. *Board of Education, Board of Education* v. *Allen*, and *Lemon* v. *Kurtzman*. In the first two of these cases, the contention was flatly rejected. In the third case, *Lemon*, the Supreme Court made no finding on the primary effect test because the Court was satisfied that the legislation did not meet the excessive entanglement test.

The argument that tax credit legislation would have the primary effect of advancing religion fails on two counts: (1) it makes the same mistake of equating collateral or indirect aid with primary effect that we have already seen with regard to the "secular purpose" test; and (2) the argument conveniently forgets that the primary effect test is a two-edged sword. The Supreme Court has insisted that the "principal or primary effect must be one that *neither advances nor inhibits* religion." Treating collateral effects as primary effects would result in serious questions about an enormous range of federal and state legislation that indirectly advances or inhibits religions activity. The Supreme Court recognized this very clearly in *McGowan* v. *Maryland*, 366 U.S. 420 (1961), in which the Court sustained the constitutionality of Sunday closing laws against the objection that they advanced some religions and hindered others.

Chief Justice Burger put the matter succinctly in his opinion in *Tilton* v. *Richardson*, 403 U.S. 672 (1971), in which the Court sustained the Higher Education Facilities Act of 1962:

"The crucial question is not whether some benefit accrues to a religious institution as a consequence of the legislative program, but whether its principal or primary effect advances religion." 403 U.S. at 679.

In *Tilton*, a majority of the Court concluded that the principal or primary effect was secular because the HEFA grants were limited to facilities used exclusively for secular education. Some opponents of the tax credit bills before this Committee argue that the benefit to the church-related schools would not be limited to secular education, and therefore the *Tilton* result is not relevant. But what these opponents steadily ignore is that in the case of tax relief legislation, there is no constitutional requirement that the indirect benefits be limited to secular education. As we have shown in the positive development of our constitutional argument, *Walz.* v. *Tax Commission*, 397 U.S. 664 (1970), sustained a property tax exemption for houses of worship. The Supreme Court had no difficulty in finding a secular purpose and a secular effect, even though there was an obvious and very substantial benefit from the exemption to religious activities.

Similarly, this Committee will have no difficulty in recognizing the unfortunate tendency of some opponents of the tax credit legislation to limit the "primary religiously neutral test" to the question of *advancing* religion. The test also applies, as we have shown, to the *inhibition* of religion. What of the parent who wishes to send his child to a church-related school, but cannot afford the tuition? He pays taxes, directly or indirectly, to support the public school system, as well he should, but why can't the government accommodate his religious convictions at the same time that it promotes the quality and pluralism of education throughout our country? The Supreme Court accommodated the consciences of the Amish in *Wisconsin* v. *Yoder*, 92 Sup. Ct. 1526 (1972). In that case the Court held that the Free Exercise Clause partially exempted the Amish from the operation of the compulsory education law. Partial relief from the tax laws as contemplated by the bills before this Committee would honor the conscience of many parents and at the same time promote a secular legislative purpose.

In summary, tax credit legislation would meet the "primary religiously neutral effect" test because (1) the primary and principal effect of the legislation would be obviously secular: tax relief for the parents of nonpublic school children, and (2) any collateral benefit to religious education or church-related schools would not be deemed to be the "primary and principal effect," as the decisions of the Supreme Court in *Everson*, *McGowan*, *Allen*, *Walz*, *Lemon* and *Tilton* clearly demonstrate.

THE "EXCESSIVE ENTANGLEMENT" TEST

In 1970 a new consideration was added to the tests for determining issues under the Establishment Clause. The Court stated in the tax exemption case of *Walz*, that "We must also be sure that the end result—the effect—is not excessive entanglement with religion." 397 U.S. at 674. Excessive entanglement became the focal point for the consideration of the cases of *Lemon* v. *Kurtzman*, 403 U.S. 602 (1971) and *Tilton* v. *Richardson*, 403 U.S. 672 (1971).

The record disclosed that the Pennsylvania statute which was the subject of consideration in the *Lemon* case provided direct reimbursement to church-related schools and contained statutory provisions which gave state officials broad authority to audit school finances and otherwise to make inspections to determine whether public funds were being used exclusively to reimburse the schools for secular services. On the basis of these consideration, it was held that continuing surveillance of parochial schools constituted "excessive entanglement." The Court also observed that the direct reimbursement of the institution resulted in excessive involvement. It is doubtful whether this fact standing alone would have proved to be critical, for in the companion case of *Tilton* v. *Richardson*, the Court upheld direct grants to collegiate institutions associated with churches. Since these decisions, courts have scrutinized legislation very carefully to determine whether the element of "excessive entanglement with religion" is present.

How are the bills currently before this Committee affected by the excessive entanglement test? Importantly, the aid is to parents by way of credits rather than assistance to a school or teacher. The tax credit approach amounts only to a decision by government to refrain from collecting revenue so that an important national purpose may be promoted—the freedom of parents to preserve a pluralistic system of education.

Eligibility for a tax credit would arise from a parent's decision to send his child to a nonpublic school which charges tuition—a decision which is in conformity with constitutional principles adjudicated by many courts. The government would not have any more administrative contact with the schools than it does today. To the extent that there would be government action, it would involve only the taxpayer. At the very most there might be an inquiry to a school to determine good faith on the part of the taxpayer's claim. (This procedure is already a part of IRS procedure with respect to deductions.)

This latter point has dual implications. A taxpayer may under current law qualify for tax deductions on the basis of contributions to churches and church-related schools. There appears to be no constitutional basis for denying a tax credit and allowing a deduction for a contribution to a nonprofit school.

Moreover, the schools are exempt federal taxation under the terms of Sections 501(a) and 501(c)(3) of the Internal Revenue Code. Certainly the holding in the *Walz* case with respect to churches would apply with equal force to church-related and other nonpublic schools. There the Court expressly recognized the distinction between a grant of public funds and an exemption from taxation. The Court in *Walz* stated that the exemption technique avoided a potential for excessive entanglement between church and state. The same rationale is applicable to tax credits. Actually, there is no constitutional difference between tax exemptions, tax credits and tax deductions. All involve a loss to Treasury in exchange for the furtherance of an important public purpose; all have the merit of avoiding the pitfall of "excessive entanglement."

LOWER COURT DECISIONS SINCE LEMON AND TILTON

Opponents of tax credit legislation cite many lower court decisions that have been rendered since June 28, 1971, the day before the Supreme Court decided *Lemon* v. *Kurtzman* and *Tilton* v. *Richardson*. There is, however, only one decision that specifically involves the constitutionality of tax credits: *Minnesota Civil Liberties Union* v. *State of Minnesota*, decided in July of this year by a State District Court after a long trial. The court concluded in this case that a Minnesota statute that provided tax credits for parents who paid tuition to nonpublic schools did not violate the First or Fourteenth Amendments to the Federal Constitution. The decision is currently pending on appeal.

The opinion of the Minnesota District Court merits close attention by this Committee. In particular, we respectfully draw your attention to the following passage:

"It is federal law that a parent has a constitutional right to determine whether his child will attend a public school or whether his child will attend a private school, even if the private school is religious. *Pierce* v. *Society of Sisters*, supra. If this right of choice is to mean anything, the state cannot make it more burdensome for a parent to send his child to a religious nonpublic school than to a nonreligious nonpublic school. Such a situation is clearly a denial of the Equal Protection Clause of the Fourteenth Amendment. This would be in effect a coerced waiver of one constitutional right in order to get another. Such a proposition clearly violates the Equal Protection Clause. It should be noted in this vein that the U.S. Supreme Court in *Wisconsin* v. *Yoder*, supra, held that the Wisconsin compulsory attendance laws were invalid as to Amish children when application of said laws after the eighth grade would gravely endanger if not destroy the free exercise of the Amish beliefs of the children."

THE EQUAL PROTECTION CLAUSE AND RACIAL DISCRIMINATION

The No Establishment Clause is not the only constitutional provision urged against the tax credit bills pending before this Committee. The Equal Protection Clause, which forbids racial discrimination in publicly supported education, is also invoked. This contention, however, is totally without merit. The bills pending before this Committee are drafted in such a way as to preclude the payment of tutition to parents who send their children to schools that discriminate on the basis of race. Tax credits may be claimed only for tuition paid to schools exempt from taxation under Sections 501(a) and 501(c)(3) of the Internal Revenue Code. Organizations described in these sections are subject to Rev. Ruling 71-447, in which the Internal Revenue Service held that a school is not exempt if it discriminates as to race in any of its policies or programs. This ruling, of course, is a reflection of, and is based on *Green* v. *Kennedy*, 309 F. Supp. 1127, *appeal dismissed for want of jurisdiction* sub nom. *Cannon* v. *Green*, 398 U.S. 956 (1970). Moreover, the schools under the jurisdiction of the Roman Catholic Church have, at the request of the Commissioner of Internal Revenue, submitted answers to IRS questionnaires relating to their policies in these areas. As a result, IRS ruled in 1971 that schools associated with the Roman Catholic Church are not involved in racial discrimination. If the schools should change their policy in this respect, they would lose their Section 501(c)(3) status and accordingly parents who paid tuition to those schools would not be eligible for tax credits.

We suggest, however, in conformity with the strong stand that the Roman Catholic Church has taken against racial discrimination, that the Committee consider further strengthening the principal bills now before it in order to preclude any possibility of the extension of tax credits to parents who send their children to schools that do not meet the standards of the Civil Rights Act of 1964. Appropriate language could easily be incorporated to achieve this result. No danger of excessive entanglement with religious affairs would result from the addition of such language. The government would simply be concerned with the racial policies of the nonpublic schools, an area in which it already has demonstrated a vital concern.

CONSTITUTIONALITY OF THE REFUND FEATURE

All parents have a constitutional right to choose nonpublic schools for the education of their children, so long as those schools satisfy the reasonable compulsory education laws of the states. Not all parents, however, can afford to exercise that right. Indeed, some parents are so poor that they do not even owe any federal income tax. As a result, a straight tax credit bill—one that does not contain a refund feature for those whose allowable credits are greater than the amount of tax owed—would not assist parents who pay no income tax. Admittedly, this is a small percentage of parents, but they constitute an extremely important group that must be given the most mature consideration.

We agree with the Honorable George P. Shultz, who, in speaking for the Administration, observed that efforts should be made "to devise a way that credit or a comparable benefit can be made to families who pay no income tax." We must admit, however, that a refundable credit would be in the nature of a grant, and would accordingly raise different constitutional questions than a straight tax credit without a refund feature. Accordingly, if a refund feature is adopted for the benefit of the poor, the refund provision should be clearly severable from the rest of the legislation in the event that it encounters serious constitutional difficulties.

In saying this, we by no means concede the unconstitutionality of the refund feature. We simply recognize the state of flux in the law with respect to the restrictions that are placed on payments of public funds for educational purposes. In our opinion, special grants for the education of poor children in nonpublic schools are certainly constitutional. There is nothing in *Lemon* v. *Kurtzman* to the contrary, and it is certain that the No Establishment Clause was not designed to frustrate the freedom of the poor. Appropriate legislation can surely be designed to aid the poor to send their children to the schools of their conscientious conviction. Assistance in this dual context, that is, aid for the poor and aid to implement religious convictions, stands on high constitutional ground and is not subject to broad sweeping generalities derived from cases that do not have comparable factual patterns. Legislation for improving the educational opportunities of the poor is entitled to the most sympathetic consideration.

Despite the strong and persuasive positions taken by the Court in Allen and Tilton, and Walz, supra, it is important to draft a statute that will not be constitutionally vulnerable. It is therefore suggested the formula adopted for tax credit be less than the full tuition. It is also important that there be a ceiling on the tax credit. Admittedly, this latter recommendation does not have important constitutional considerations, but it has significant economic implications. It is, of course, essential that the tax credits do not exceed the cost of secular education, but in the case of church related schools, this does not present a problem for tuition is not high and the secular content is comparable to that of a public school.

The CHAIRMAN. We thank you, sir, for your very fine statement, and congratulate you on making it.

Are there any questions of His Eminence?

Mr. Burke?

Mr. BURKE. I wish to commend you on your excellent statement. What are the figures now on the closing of private schools in and around the archdiocese?

Cardinal COOKE. The figures in the present year?

Mr. BURKE. No; projecting the figures during the next 2 or 3 years, what is the problem you face up to there?

Cardinal COOKE. In the next year or two, the numbers that will cease to go to the schools, the nonpublic schools in New York, depends very, very much on the legislation being considered by this committee and also by other State assistance that is under consideration.

As you know, in New York we have two pieces of legislation right now affected by court decision and this will necessarily affect our decisions in the year ahead, or in the next year or two.

We are going to make every effort to try to go ahead but the financial burden can become so oppressive that, really, we wouldn't be able to continue as we have in the past.

With regard to numbers, I would like to ask Monsignor O'Keefe if he has something to add.

Monsignor O'KEEFE. There are approximately 100 schools in difficulty and 88 of these schools are title I schools recognized as caring for the underprivileged. All of these schools are marginal. Many were supported in part by more affluent parishes.

The inner-city schools do face a problem in the next year or two.

Mr. BURKE. I will ask Bishop McManus to comment on the situation in and around Chicago.

Bishop MCMANUS. We do not envision the wholesale closing of schools. Our plan is the opposite. We want to keep all of them open except in those instances where the consolidation of two schools would produce better schools. As the cardinal and Monsignor O'Keefe have said, our success in fulfilling this expectation will depend in large measure on the voluntary contributions people give to our schools and their ability to meet escalating tuition rates.

Our plan is to stay open. My appearance here is a plea for supplemental Government assistance to what has already been given to the schools through private investment.

Mr. BURKE. Thank you.

That is all, Mr. Chairman.

The CHAIRMAN. Mr. Betts?

Mr. BETTS. Your Eminence, I think you have given an excellent position paper on this subject.

I feel the constitutional problem is going to be one of the big issues and you have indicated you have your lawyer with you from a New York law firm. I wonder, for the record, if we might have a brief statement from him as to the constitutional position that your organization has taken on this question.

Cardinal COOKE. Mr. Cusack, I am sure, would be pleased to make a brief comment on that.

Mr. CUSACK. Yes, Mr. Betts.

We have studied the problem of the constitutionality of this kind of legislation and have concluded with a considerable degree of conviction that this legislation would stand up constitutionally.

We are impressed by the fact that its primary purpose, effect, and thrust is to promote quality education, and that it is only in its secondary effect that it benefits institutions that have as one of their functions the promotion or religious principles.

We are also impressed by the fact that the aid is primarily given to the parents of these children, that the parents and their children are the immediate and direct beneficiaries, that the aid that flows to the schools is peripheral and not only peripheral but partial.

In other words, whatever aid would flow would constitute in the final analysis only a partial assistance toward the total cost of the entire system. In terms of what seems presently realizable, any governmental assistance flowing even indirectly, such assistance would be a very small part of the total cost.

Thirdly, we are very much impressed by the fact that, to our eyes, we cannot see any real case made out for a contention that there would be an untoward degree of governmental involvement with the processes of education in a church-related school.

As we know, under the recent decisions of the U.S. Supreme Court the Justices have placed great emphasis upon the constitutional impermissibility of creating situations where there is excessive entanglement between church and state and we believe in a program such as tax credits there is virtually no governmental involvement, certainly no governmental involvement at all in the processes of education. Consequently, I think mainly on the basis of these principles we are personally satisfied that there is not a constitutional problem with this kind of legislation.

Mr. BETTS. I thank you and appreciate it and I think your statement is very helpful.

Mr. CUSACK. Thank you.

The CHAIRMAN. Mrs. Griffiths?

Mrs. GRIFFITHS. I would like to ask Mr. Cusack a question.

A very distinguished member of this committee who supports this bill said to me the other day he thought it would be better if, in place of a flat credit, this were expressed in terms of a percentage, that it would more easily avoid a constitutional argument.

May I ask: Do you think that would have merit?

Mr. CUSACK. I believe it would have merit provided I correctly understand the suggestion that was made.

I believe that there are in this area two things that would strengthen the posture of this legislation from a constitutional standpoint

One may be precisely what was suggested; namely, there would be a definite point to limiting the credit to a percentage of tuition paid because I think it would thereby manifest a principle that it is not Government's part to bring about a total underwriting of what should be primarily a system of voluntary effort on the part of citizens to promote a form of education with church-related aspects.

So, I do agree that there should be an added advantage from a constitutional standpoint to an approach that did not involve total assistance, whatever the amount of tuition might be. I think, therefore, it would be preferable to state some percentage and let this percentage be the maximum amount of tuition which could be taken into account for the purpose of a credit.

Mrs. GRIFFITHS. I would like to thank you because you put the stamp of approval on the judgments of a man on this committee who I think has remarkable judgment and is a very fine member.

I might say that Paul Kauper, of the University of Michigan Law School, some years ago pointed out that he felt there was no constitutional conflict in this type of aid. And, in view of the fact he is one of the better constitutional lawyers and tax lawyers in this country, he could not be accused of emotionalism. I think his ideas would carry some weight.

I do not intend to quarrel with His Eminence but I want to point out I think the first contribution of the Catholic schools is the fostering of a sense of values. I think it is really remarkable and I do appreciate your testimony.

Cardinal **Cooke**. I agree with your remarks.

The **Chairman**. Mr. Byrnes?

Mr. **Byrnes**. Mrs. Griffiths covered my point.

The **Chairman**. Mr. Schneebeli?

Mr. **Schneebeli**. We are glad to have you here, Your Eminence.

There is a further question I would like to ask Mr. Cusack with respect to the percentage paid.

Included in this is the area where I have a quarrel with this legislation which is the credit given to parents who send their children to these expensive eastern prep schools and, if you give a percentage of tuition paid, if I understand your position, the more you pay the more your tax privilege and credit.

If you send a child to certain schools, you will pay $4,000. Do I understand he gets more credit, at 25 percent, say $1,000 a year?

Mr. **Cusack**. There are two limitations. There would be an overall dollar limitation, let's say, for example, $400; so, no matter how much tuition he paid, whether he paid triple that, the fact of the matter is that only that first $400 would be eligible for consideration.

The second point would be, at that stage, having fixed the maximum dollar legislation, there would come into play a percentage which would further serve to reduce the maximum amount allowed.

Let's assume, for discussion, that that percentage was 50 percent. Taking your example of a parent who paid $1,400 in tuition, the $1,400, immediately is reduced by the dollar limitation to $400. The $400 limitation is then reduced to $200 by reason of the percentage limitation.

Mr. **Schneebeli**. This is an area that troubles me, the private prep school credit, and I don't know how it will be reconciled but I am glad there is a limitation along this line. It doesn't reconcile with the poor miner who saves money to send his son to college.

Your Eminence, I assure you the committee has great respect for you and your judgment and we are so happy you and your colleagues came to testify before us.

Cardinal **Cooke**. Thank you.

The **Chairman**. Mr. Carey?

Mr. **Carey**. Thank you, Mr. Chairman.

Cardinal Cooke and Bishop McManus, it is a pleasure to welcome you here.

As neighbors of the archdiocese, living in Brooklyn, we are pleased to exchange views with our sister diocese.

Cardinal Cooke, yesterday a witness from a very respected organization, the AFL-CIO, made some statements I found to be distressing and unrepresentative of the mass of thinking of many labor organization people.

One which disturbed me greatly was repeated in the Washington Post today. It cited the statement by the spokesman of the AFL-CIO, and said:

"In Washington, early today the bill was denounced by a spokesman of the AFL-CIO as a virtual invitation to segregationists."

In your statement you pointed out there were moral considerations and convictions as to why you would not participate in any educational effort to advance segregation.

On a more realistic basis, is it not true that the Catholic school system and other nonpublic schools are receiving certain aids from the title I Education Act, such as textbooks? Catholic schools are now under the Civil Rights Act in terms of nonsegregation?

Cardinal COOKE. Yes, and we are happy to be under that act. All of our schools have complied with the nonsegregation legislation.

Mr. CAREY. I would like to hear from Mr. Scanlan, a distinguished attorney from Washington, and a former classmate of mine in our respected institution in New York.

Mr. SCANLAN. Since we left it.

Mr. CAREY. What would be your view of the suggestion that this bill extends an invitation to segregationists?

Mr. SCANLAN. As I understand the bill as presently drafted, it contains limitations that the children can only attend schools that qualify under 501 (a) and (c) of the Internal Revenue Code. The Internal Revenue in recent years has been policing that section.

If the schools don't comply, they would lose their tax exemptions, which is far more serious than a tax credit for some students attending such schools. I don't think there is any possibility whatsoever of encouraging segregation.

As you have indicated, we have been used to this for many years and I think we can say the great majority of the Catholic schools and Catholic school administrators follow it wholeheartedly and, if they don't the Internal Revenue could do something about it. I understand that was the intent of these bills.

It may be that the language in the bill could be made more clear in this regard, but I think the intention is clear. I think the arguments of the AFL-CIO have no basis in fact.

Mr. CAREY. It is my intention, when the record is concluded, to ask the AFL-CIO to withdraw or retract that statement.

I am interested in your statement from the United States Catholic Conference. On page 3, you state:

"Catholic schools render a significant service in educating the poor and disadvantaged."

One of the concerns I have, as a sponsor of this bill, is whether to include in this legislation adequate assistance for poor people who cannot afford quality education because of lack of schools.

In this paragraph, you state: "A research study in Michigan found more evidence of equality of opportunity in the church-related than in the public schools."

You do not identify that study. Would it be available?

Cardinal COOKE. I think Bishop McManus can take care to that.

Bishop McMANUS. That quotation is drawn from the "Final Report of the President's Panel on Nonpublic Education." I think that has been filed with this committee.

As you know, the President appointed four people to serve on a panel for 2 years to study the problems of the nonpublic schools in this country. The panel's report was filed some 6 or 7 months ago.

The panel relied on extensive research to back up its conclusions.

The reference in the panel report is to a published study, available from the Government Printing Office, which was done by Boston College. In that study is the panel's statement about the educational opportunities available in the nonpublic schools.

I would be happy to see to it, Mr. Carey, that the particular document is brought to the attention of the committee.

Mr. **Carey**. I would appreciate that.

Further allegations were made by witnesses speaking for various groups that there is a custom in the nonpublic schools of screening, by the use of IQ and other means, the more attractive and more advantaged pupils.

The second part of your statement indicates that in Chicago this would not be true, according to the study you have here.

What is the source of that information?

Bishop **McManus**. It is the same document to which I referred. The Boston College study refers to several so-called fallacies concerning nonpublic schools. One of the fallacies referred to is that the nonpublic schools take only bright youngsters and leave the slow learners to the public schools.

They found, on the basis of their research, that presumption could not be verified to the extent they were able to study it in several large cities.

Another fallacy was that the nonpublic schools by their very existence contribute to increased segregation of the races. Research showed the very opposite was the case, viz, that nonpublic schools by holding white people in cities keep them at least in physical proximity with black people; to that extent, nonpublic schools were contributing to a continuing pattern of integration in urban areas.

There were several other statements in this study that I think would be of interest to this committee.

Mr. **Carey**. On that same point, the statement was made by a distinguished educational spokesman of New York City, Mrs. Florence Flast, that the schools were not closing. To the best of my information, that statement did not square with the facts as I know them.

What has been the matter of closing? Have some been due to consolidation? Could you give us some of the history of the closings?

Cardinal **Cooke**. We have made every effort to keep the schools going in the inner city because we feel that is an area of very important concern for us but the fact is that in the inner city the folks are less able to help with the tuition so that the costs of an individual school can be very, very high.

As you know, in the Archdiocese of New York, I appealed to the 404 parishes to pool resources and to share, to help and even after doing this for 3 years we still are unable to cover the rising costs.

We have in the inner city, with reluctance, allowed schools to go when we just couldn't possibly continue. Of course, we realize in some situations that consolidation can be an improvement in quality education.

We have been trying to work in such a way that people would not, in a spirit of hopelessness, give up and panic. I think this is your concern in New York and throughout the country and this type of legislation you are considering will be a tremendous source of encouragement and hope not only to New York City but to all of the areas of this country and it will encourage people to continue to sacrifice and make their effort and to make their contribution, their investment in education.

The type of help that is looked for is really supplemental to just keep the nonpublic effort going.

Monsignor O'Keefe, would you have any comments?

Monsignor O'KEEFE. I think some of the consolidations taking place reflect the pattern of population in the city which has changed so much, particularly in Manhattan. We have consolidated a number of schools but, again, always to economize and to make certain we are using all of our resources prudently and effectively.

We are not, as Mrs. Flast sometimes claims, keeping schools open with poor management. We are consolidating where we can economize. The diocese is determined to stay in the inner city. The last thing we will do is to move out but there are mounting difficulties.

Most of our closings have been for the purpose of better use of our resources.

Mr. CAREY. The effect of this bill, then, would be to assist you in your mission of attempting to use every resource possible for educational equality for the poor. You will not be able to continue this mission unless you have some aid?

Cardinal COOKE. Very much so.

Mr. CAREY. Like a shepherd, you have led me to my point. Is the uncertainty of the schools the real reason why parents are enrolling their children elsewhere?

Cardinal COOKE. I think that is a prime factor. Financial reasons is very much in there but this whole uncertainty.

You know how parents are. They feel if the youngster won't be able to continue there, why have him one place and have him shift later. They kind of give up hope.

Bishop MCMANUS. A study was undertaken in Boston on the reasons why parents withdrew their children from Catholic schools and sent them to public schools. There was a relatively small sampling of about 150 parents. It was interesting to find that about 22 percent of the parents withdrew their children because they were doubtful the schools would last for the duration of their children's schooling.

We find in Chicago that when we ask parents why they are not sending their children to the first grade in Catholic schools but instead are putting them in public schools, they say they are hesitant to get them started in what they regard as a shaky enterprise; they don't know whether they will be able to weather the financial storm swirling around them.

I think the point is well taken that a tax credit would be a timely stimulant for the continued investment of private money in the voluntary enterprise which is the nonpublic schools of the United States.

The rationale behind tax credits, as I see it, is that it will first afford reasonable relief to many middle-income people who are presently overburdened by the tuition they are paying and second, it will provide a powerful incentive for a continuation and an increase of investment of personal funds in a private enterprise.

From what I have been able to study on the history of tax deductions and tax exemptions so wisely worked out by this committee over the years, I conclude that tax credit would meet the two criteria of horizontal equity and of stimulation of investment of private money in enterprises which serve the public good.

Mr. CAREY. A number of witnesses from New York and national organizations have cited the findings of the Fleischmann commission report, which I believe are incomplete. The report, which addressed the problem of overall financing of public and nonpublic schools in New York, has not been adopted by the Regents of New York.

I have read the study and it is my impression that the thesis of the study is that if nothing is done to aid nonpublic schools, they will wither away and disappear and we won't have to worry any more about any financing. The report is a sort of recommendation that they be allowed to continue to budgetary anemia. I would call it educational euthanasia.

I know the church position with regard to human life, but what is your reaction to the idea that if nothing is done the schools will wither away and there won't be a problem of financing?

Cardinal COOKE. I would say of the Fleischmann commission that the assignment they received was to find ways of helping nonpublic education in addition to the other studies they were making for the State and they were to try to find ways of continuing the partnership between public and nonpublic education.

Instead of coming up with any answers that were of any help, they came up with recommendations that would, as you say, allow us to die gracefully.

I think the Fleischmann commission report was treated by the legislature in New York in the proper way. It was filed. I think the whole approach was very doctrinaire and I don't think it was any help in solving the real problem that faced us.

However, Monsignor O'Keefe can speak more extensively of the Fleischmann commission.

Monsignor O'KEEFE. Basically, they took the evidence and used it incorrectly in one case.

For instance, the fact we are going to phase out is based on what they call the high-cost strategy. They said we would be absolutely bankrupt if we continued our present structures as they are today; for instance, that if we had all the faculty and all the buildings but we only had half the students that we would be bankrupt and our costs would be exorbitant. But if we only had half the students we would only have half the faculty and buildings. The facts were misused.

That is the conclusion that got into the Fleischmann study, the New York City planning study, and in a magazine article that was presented here the other day. It is not the case.

If we cut our enrollments in half, we will cut faculty in half and other investments, so we won't bleed to death because of lack of management, as the Fleischmann report basically alleged.

Mr. CAREY. There has been much talk that the money has been finding its way into church-related schools. I recall reading in a New York magazine an extensive review of the financial plight of the archdiocese. It was a far-reaching analysis of your structure. You share something with this committee; are you grappling with a deficit?

Cardinal COOKE. Very much so. But that is the great opportunity of most dioceses in the country, that they are grappling with a deficit.

Certainly our situation is such that many of the parishes would be making contributions of between 50 percent and 60 percent of their total funds to assist the schools and, of course, you couldn't possibly go much beyond that and still keep the roof on the church, so I think that this is the situation and I think in the Archdiocese of New York that burden is such that we are not able to go much further on it. You can imagine how it would be in the smaller dioceses of the country.

Mr. CAREY. Would I be correct in saying that the trend in the church and in many of the dioceses is toward regular and full public disclosure of finances?

Monsignor O'KEEFE. Yes; we try to give a consolidated report of the whole financial situation.

Mr. CAREY. In terms, then, of contending with the notion of entanglement and the use of funds, would there be any real difficulty, then, for the General Accounting Office, or the Secretary or the Treasurer to be able to follow these funds to their ultimate use? Wouldn't it be possible to have accountability without entanglement?

Monsignor O'KEEFE. I believe if it was necessary there would be no problem because these things are scrutinized very, very well and in the archdiocese of New York we have a completely separate accounting system for all of the schools and there would really be no problem in terms of following the whole picture.

But the beauty of these proposals you have here is that the tax credit is to the parent and those who wouldn't have the patience to follow everything the way you would like; they don't have to be as much concerned about that, and I think this is why we favor this type of assistance to the parents because in the long run they are the ones carrying the burden.

Mr. CAREY. I won't press the point further. The brief you supplied us with has an extensive discussion of these points prepared by your lawyer, I think the committee will be interested in that.

To show my respect for you, I will close with a phrase familiar to you, pax Dominus vobiscum.

The CHAIRMAN. Mr. Pettis.

Mr. PETTIS. I wish to welcome you to this committee and I, along with my colleague from New York, find it a little difficult to understand the press report of the AFL-CIO that any serious consideration of this concept would lead to discrimination.

I spent 16 years of my own life in a parochial school for my education; my children have; and if there exist schools that are nondiscriminating, they are parochial schools. When I was in the first grade, they were totally nondiscriminating. There were far more Chicanos in the school I attended in the first and second grades than in public schools.

The Chicanos, blacks, et cetera, are more interested, as Mrs. Griffiths said, in values other than those found in the public schools.

The idea that we are going to give a big tax break to some of these people is ridiculous.

I attended the convocation of my daughter's parochial school last Wednesday. There is only one wealthy family whose children are in that school of 700 pupils. The others are very moderate to low-income groups and I am delighted to find this kind of family interest in the kind of values you find in parochial schools.

Laying aside constitutionality—I can't speak to that as I am not a lawyer—whether parochial schools, Catholic, Lutheran, whatever, are discriminating, my experience over a lifetime has been different from that idea. I don't know where these theories that parochial schools discriminate and benefit come from. That has not been my experience.

Mr. DUNCAN. Mr. Schneebeli commented on a point I think is of interest to this committee and I think to our other colleagues, that is, aid to strictly private schools.

I think many of us have some sympathy for aid to parochial schools, but where a man sends his youngster to a strictly private school of his own volition, I have some reservation that he should receive assistance from this legislation.

Cardinal COOKE. I would like Bishop McManus to comment on that.

Bishop MCMANUS. I am afraid, Mr. Duncan, that legislation which would provide tax credits only for parents who send their children to church-related nonpublic schools would run into serious constitutional difficulties. It would involve, as the lawyers tell me, an improper classification.

The category of school that would probably weather a legal test is that now set forth in the bills pending before this committee, namely, nonprofit, nonpublic schools to which parents may send their children in compliance with the educational laws of the State.

That is pretty much a classic definition of the nonpublic school that has appeared in legislation previously enacted by Congress.

The legislation before you does provide that high-income families will incur a reduction in the credit at the rate of a given percentage point for each thousand dollars over $25,000 a year, or, as the Treasury recommended, over $18,000 a year. I think we would be inclined to support this concept.

High-income families, generally the ones who would patronize the very expensive schools, would have a reduction in their credit in terms of their excess gross income over a given amount.

I think any legislation, Mr. Duncan, that is enacted, always has some inherent inequity. Take medicare. Under medicare, a very rich man will still have his expenses paid. I don't think that was the intent of medicare. Medicare was intended to take care of the bulk of the people who in their old age cannot afford the very expensive cost of hospital care. Yet, under the law, a wealthy person may benefit.

I would not like to see the committee disregard or neglect the needs of the middle-income people, whom Mr. Pettis described so eloquently, because a few people in the upper-income brackets might receive an incidental benefit through the tax credit.

Mr. DUNCAN. We have a student loan program which has a limitation of $15,000. What would you think if the limitation in this bill was $15,000?

Bishop MCMANUS. I would hesitate to take a stand on a given amount.

The legislation before you, as I mentioned, has two ceilings: One, $25,000; and then the recommendation from the administration of $18,000. I think that the decision on that will require research on the number of people in these income brackets who actually have children in nonpublic shcools. That will be necessary in order to cost out the expense of this bill as it is finally enacted into law.

Mr. DUNCAN. We have had some testimony that this bill would permit children of people of low income to enter some strictly private schools but I have a report, a national report, from independent schools which shows that the range of costs runs in the New

England States from $2,700 to $3,800 for boarding students and in the southeast $2,000 to $3,200.

Do you really believe many parents of low income would take advantage of this $200 benefit?

Bishop McMANUS. To the credit of the independent schools they have offered a substantial number of scholarships to children of low-income families for the purpose of having a student body broadly representative of the total population

Many of the independent schools are eager to give their pupils the opportunity to mingle with fellow students from many walks of life and from many different cultural backgrounds

Mr. DUNCAN. I think I misinterpreted Mr. Biemiller's statement yesterday. It is my impression he did not infer that the parochial schools practiced segregation, but that strictly private schools do, which I agree with him, they do in some places.

I know you do not have a policy of exclusion in Catholic schools and the other church schools, but aren't you aware of the fact that strictly private schools do have a selective policy based on scholarship and also the ability to pay? Are you aware of that?

Bishop McMANUS. I am aware that some independent schools have restrictions on admission. I would say again that the trend in the independent schools is to try to broaden their enrollment so that they will not have only the real bright youngsters and only those from high-income families.

Mr. DUNCAN. I read the other day that when schools opened, let's say in Tennessee, Nashville, Michigan, and other places, the areas having the most trouble with the busing problem, the private schools were just jam-packed with applicants and some do not get in.

Don't you think that would tend to indicate to—I will separate parochial from private schools; maybe that is a mistake—but don't you think some afford a haven for segregation?

Bishop McMANUS. There is evidence that in some sections of the South the so-called white academies have been a haven for those fleeing from court-imposed integration in public schools.

The Catholic schools, as we said in our statement filed with this committee, have refused to be party to that kind of operation.

In Alabama, our schools went into the courts to defend our right to refuse admission to Catholics who were leaving a public school for no other reason than they wanted to avoid the integrated pattern being put into that school.

The white academies would not qualify for the benefits of the pending tax credit legislation because they would not meet the requirements of the present civil rights laws of the United States, nor would they meet the requirements of the Internal Revenue Service.

Mr. DUNCAN. Wouldn't it be a difficult matter to really prove they were practicing segregation in some of the private schools where they have the exclusive right to select or reject a student?

Bishop McMANUS. I think it probably would.

I repeat again, I would hate to see the abuses that might somehow be involved in tax credit legislation jeopardize the benefits it would bring to an overwhelming mass of people.

Mr. DUNCAN. Quoting further from that report, in 1971 I note the enrollment in coeducational day schools increased by 2.4 percent and the Catholic schools declined in enrollment 1.1 percent. There is some indication more youngsters were going to the strictly private schools than the Catholic schools.

Would you reach the same conclusion?

They had an increase in the coeducational day schools and a decline in the Catholic schools?

Bishop McMANUS. I hesitate to answer the question because I am not immediately aware of the contents of the document to which you refer. I take it that it is a report on the independent schools from the National Council of Independent Schools to which a very few Catholic schools belong.

On the basis of that, I couldn't draw a conclusion as to whether the rate of enrollment increase in the independent schools is greatly in excess of the rate in the Catholic schools as a group.

I think the conclusion I would draw, subject to revision after I would look at the document, would be that the enrollment in the nonsectarian private day schools has increased more than has the enrollment in those Catholic schools which are members of this association.

Mr. DUNCAN. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Betts?

Mr. BETTS. I would like to pursue the constitutional question from one other angle.

I understand that the Supreme Court made a point of the fact that even though the funds are separated out, educational as distinguished from religious, once those educational funds are used in parochial schools, part are used for religious education which raises the whole point again. It is still difficult to separate them out.

Mr. CUSACK. Yes, Mr. Betts; that was probably true in that series of cases, in the *Lemon* and other cases which were decided about a year and a half ago.

There we were dealing with legislation which involved the making of grants directly from State governments to schools for the purpose of subsidizing teachers' salaries, and in that legislation—there were several laws involved—they had written in protective provisions stating that nothing in this legislation shall permit the teaching of religion, et cetera, a protective provision along those lines.

Therefore, it became impelling upon the public authorities of those States, as a method of protecting the moneys which were granted to the nonpublic schools, to devise ways and means of assuring themselves in the final analysis that this legislation was not violated.

This set in force the whole process of excecessive entanglement of Government in church-related education. I don't think you have any of that in the tax credit bill.

Mr. BETTS. Do you think the important difference is the distinction between the grant and the tax credit?

Mr. CUSACK. I think that is a basic conceptual distinction. There is a basic factual difference in that legislation. The money, in fact, flowed from the State government to the schools for the purpose of subsidizing primarily teacher salaries, where as here the money flows not to the school at all but to the parents by a tax credit and the money in the hands of the parents is a method of helping him pay tuition. The relationship between the Government and the entire process stops there.

Mr. BETTS. I see.

Thank you very much.

The CHAIRMAN. Mr. Brotzman.

Mr. BROTZMAN. Thank you, Mr. Chairman.

I think this question may have been answered—I was detained outside the hearing room, but I wanted the panel to be able to respond.

There has been testimony before the committee that the problems of parochial schools are not really economic ones. I have heard a lot of testimony the other way, including yours.

Has anybody asked you to respond to the particular testimony that the problems of parochial schools are noneconomic, Cardinal?

Cardinal COOKE. We touched on it a little bit.

Mr. BROTZMAN. Would you respond to that? I think the record needs your answer on that.

Cardinal COOKE. Certainly among the problems of the Catholic schools, the financial one is certainly a very, very serious one. There are other problems, of course, in the school system. I don't know of any school system that doesn't have problems, whether problems of personnel, teachers, problems of updating curriculum, problems like that. In fact, we like to have problems; that is why we are there, to serve.

I know, of course, that sometimes people say maybe the parents are not as determined to exercise their freedom of choice in education to have nonpublic schools. This could be debated back and forth and certainly in a country such as ours, that is again the beauty of the situation; we can all debate and be good friends.

I know from personal experience in the Archdiocese of New York, when a school has to close, that it is one of the most difficult assignments a person can have. If you happen to be the archbishop, it would be a good day to be in Alaska. The feeling of the people is very strong.

Bishop MCMANUS. The Panel on Nonpublic Education on which I served commissioned about a half million dollars worth of research on the dimensions of the "nonpublic school problem."

The heart of the problem is that for the past 5 years enrollment in nonpublic schools has been declining at a faster rate than has enrollment in public schools. The question addressed by the panel was what interventions may be employed to slow down the declining rate of enrollment in nonpublic schools. Before answering the question the panel studied various factors responsible for dwindling enrollment.

One large factor was the movement of many of the patrons of nonpublic schools from city areas where there are schools to suburban areas where none had been built and would not be built because of the high cost of construction at the present time.

Another factor was the declining birth rate 5 and 6 years ago which was reflected in lower first grade enrollments.

Still another factor was a shift in values; young parents, in particular, sometimes see many advantages in public schools near their new suburban homes. They see what taxes they are paying; the public school is close by, while the Catholic school is far away; so they make their decision to send their children to public schools. There are some, too, who simply prefer a public school over a Catholic school.

Then there is the factor of cost. Higher tuition rates are not causing people to withdraw their children from Catholic schools but are deterring people from putting their children in them in the first place.

Another factor we discovered in our research was the uncertainty of our schools' future was deterring people from investing their money and children in a risky enterprise.

In summary, the nonpublic school crisis or nonpublic school problem has many facets. To deaccelerate the present rate of declining enrollment will require many interventions and some of these will have to be taken by the nonpublic schools, themselves.

Nonpublic schools must recruit students, clarify their objectives, go in for innovative programs, and make the tuition rates more within the range of the people to whom they can appeal.

One intervention that we are seeking is tax credits. That will not solve the whole problem but it will be of much help in our appeals to parents to continue their investment of personal funds in nonpublic schools.

Mr. **Brotzman.** I would understand that the other interventions are taking place, is that correct, so that it we did something like this it would really be a major contribution towards solving the problem?

Cardinal **Cooke.** That is exactly it.

Bishop **McManus.** If this committee were to approve tax-credit legislation and it were enacted by Congress, this would be a declaration of public policy that this Nation wants the nonpublic schools to continue. With that kind of commitment from Government, those of us operating these schools then have a base on which to intensify our appeals to encourage youngsters to continue in our schools.

Mr. **Brotzman.** Thank you very much.

My question has been answered, and I would like to express my appreciation for your testimony.

The **Chairman.** Any further questions?

If not, we thank you so much, Your Eminence, for coming this morning and bringing those with you at the table. You have been very helpful.

Cardinal **Cooke.** Thank you, Mr. Chairman and members of the committee, for the opportunity given to us and also just for the expression of your concern and interest in this area which already gives us a little bit of encouragement. We hope it is successful.

The **Chairman.** Thank you very much.

Our next witness is our colleague from Massachusetts, Mrs. Margaret M. Heckler.

STATEMENT OF HON. MARGARET M. HECKLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

The **Chairman.** We are pleased to have you with us. You are recognized.

Mrs. **Heckler.** Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, I appreciate very much this opportunity to discuss a most pressing and serious issue with you.

The issue is serious because it basically involves the quality of education of American children.

The issue is pressing because it borders on crisis and time is running out.

The Congress has responded to the needs of public elementary and secondary education in the United States, recognizing that the minds and characters of American children rank high among national priorities.

And, yet, public education still wrestles with the problem of rising costs and enrollment, on the one hand, with rising taxpayer resistance to increased property tax rates, on the ohter.

Revenue-sharing legislation, written by the extraordinary effort of this committee, introduces an unknown factor into the situation. It is not regarded as a substitute for property taxes nor is it designed to permit communities to lower tax rates. As I understand it, revenue sharing gives States, counties, cities, and towns additional revenue to meet their needs while they set about restructuring their tax rates for better generation of revenue.

Meanwhile, in the background looms the *Serrano* v. *Priest* decision in California which calls into question the use of local property taxes to finance public education.

So, public education continues problem-ridden despite the efforts of the Congress and of local communities, themselves.

Now, still another problem moves relentlessly into the picture of American elementary and secondary education. It is the system of 13,000 nonpublic schools attended by some 4.5 million children.

These schools and these students, an integral part of American life almost since the founding of the Republic, are experiencing the very same cost problems of the public education system, but their revenue well is much nearer to running dry.

In the past 5 years, 1,300 Catholic schools alone have been forced to close, adding close to half a million more students to the public school systems of the nation.

Closer to home, in the diocese of Fall River in my congressional district, 19 parochial schools have had to close during the past 5 years. And this has meant 5,000 more youngsters entering public schools.

The trend is continuing and is going to accelerate as costs mount and faculties are depleted. This is affecting primarily Catholic schools in my district, but the same situation is true of all nonpublic schools all over the country.

As more and more of these nonpublic schools close, the immediate effect is going to be an enormous strain on the public system.

In terms of dollars, it has been estimated that if all the nonpublic schools in the country closed, the cost of public education would increase by $10 billion. Three billion of that for annual operating expenses; the remainder for capital improvements to expand facilities.

Consider what this would mean to local tax rates, already inflated, in communities already hard-pressed to make fiscal ends meet.

To demonstrate the impact, let me cite specific figures in my part of the country.

In the city of Boston, the new property tax rate this year is $196.70 per $1,000 assessed valuation. If all the nonpublic schools in that city were to close and the students transfer to public schools, that tax rate would increase by $20, to $216.70.

In my own congressional district, if the same thing happened, the property tax rate in the depressed city of Fall River would increase by $46.20 per $1,000 valuation; the city of Taunton by $39.70; the city of Attleboro by $6.40 per $1,000.

These are cities whose taxpayers are already backed to the wall in trying to meet the cost of services and facilities they require for basic comfortable living. Every additional dollar in taxes has the aspect of a straw on a camel's back.

Aside from the financial dimensions of the situation, there is the larger question of the physical effect an additional 4.5 million nonpublic school students would have on public school facilities and the impact their presence would have on the overall quality of education.

The result, it is safe to say, would constitute nothing short of a crisis for American education.

Turning from the practical aspects of the problem, there is the recognition of the value of the nonpublic system, itself.

It has produced in the last 150 years countless constructive, productive citizens whose collective contribution to this country has been sizable. It represents the best of the American genius for pluralism, a helpful counterweight in the Nation's overall education system.

To let it die, I submit, would do violence to the public school system, to the American taxpayer, to the quality of the education generally, and to the precious American freedom of choice.

To let it die so that all children would have to attend public schools would be to pervert freedom itself.

As a solution, I have proposed, along with the distinguished chairman of the committee and the distinguished ranking member of the minority, as well as other Members of the House, extending to the parents of children attending nonpublic schools a credit against the Federal income tax they must pay.

This credit against their tax liability would equal half the yearly tuition they pay, or $400, whichever is less.

As a solution, I feel the legislation before this committee is the right vehicle to resolve the situation we face today. The tax credit proposed would provide relief which is desperately needed.

It has been estimated this plan would deprive the Federal Treasury of $508 million a year. Practically, the loss to the Treasury compares quite favorably with the $10 billion annual increase that would have to be assumed by local taxpayers if the nonpublic system went out of existence.

And that says nothing about the increased direct Federal assistance that would be required. Of course, it does not absolve the parents from continuing to support the public schools with their taxes.

What of the constitutional question? I strongly support the separation of church and state. And I do not believe the Congress should ever knowingly violate the Constitution.

I do believe this tax credit legislation will stand any court test of constitutionality. It meets the three tests laid down by the Supreme Court in the well-known *Walz* case involving the tax exemption of property used for religious purposes.

These tests are that Government assistance in the form of tax exemption must be for a public purpose, must have a primary effect which neither advances nor inhibits religion, and must not result in an excessive entanglement of Government with religion.

The tuition tax credit proposal meets these tests on the grounds that the relationship is between the Government and the parents, and not with any religious institution.

Furthermore, education is a public purpose, as the Court has ruled in other cases involving textbooks and transportation for private school children.

Obviously, this committee is faced with a serious dilemma. We are at the point of crisis on this issue, and I would say, frankly speaking, the constitutional arguments suggested are not sufficient to warrant the judgment that Congress should not pass the legislation.

On the economic side of the issue, the crisis is such that we are threatening not merely the non-public-school system but the quality of education in general because all children in education throughout the country will face foreclosure.

The **Chairman.** Thank you.

Mr. Burke?

Mr. **Burke.** I wish to commend my colleague, Margaret Heckler, for her appearance here and the excellent arguments she has presented to the committee. She is recognized as an expert on constitutional law and is a delightful person, in addition.

The **Chairman.** Mr. Pettis.

Mr. **Pettis.** Thank you, Mr. Chairman.

I, too, wish to commend our colleague, Mrs. Heckler, for an excellent statement and for the unique point of view she presented to the committee this morning.

The **Chairman.** Mr. Brotzman.

Mr. **Brotzman.** Thank you, Mr. Chairman.

I, too, would like to welcome our colleague, the gentlelady from Massachusetts, and congratulate her on the vast amount of homework she has done for this statement.

I have had opportunity to talk with her on prior occasions, and, as usual, her testimony was clear, concise, and very helpful to this committee.

The **Chairman.** Mr. Duncan?

Mr. **Duncan.** Mr. Chairman, I had the pleasure of serving with the Congresswoman on the Veterans' Committee, and I know of no district that receives better representation than her district.

Mr. **Burke** (presiding). We thank you for your appearance here today and the great contribution you have made.

Mrs. **Heckler.** I wish to thank the members of the committee. I realize you have a crowded schedule, and I appreciate the workload of this committee. I am here because of an enormous personal concern on this issue. Thank you.

Mr. **Burke.** I have been informed that Congressman Larry Winn, Jr., is next.

STATEMENT OF HON. LARRY WINN, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KANSAS

Mr. **Burke.** We welcome you to the committee, Congressman.

Mr. **Winn.** Thank you very much.

Mr. Chairman and members of the committee, I want to take this opportunity to thank you for this chance to testify about the issue of public assistance to private schools. The committee is to be commended for its willingness to consider this most urgent problem at this time. From the standpoint of your pressing schedules, I will make my remarks as brief as possible.

In addition, I would like to submit a written statement from the Kansas Association of Nonpublic Schools.

Mr. **Burke**. Without objection, it is so ordered.

(The statement follows:)

STATEMENT OF THE KANSAS ASSOCIATION OF NON-PUBLIC SCHOOLS

The Kansas Association of Non-Public Schools extends its thanks to the House Ways and Means Committee and to Kansas Congressman Larry Winn for the opportunity to submit testimony in support of tax credits for tuition paid by children attending non-public school.

The Catholic, Lutheran, Episcopalian, Jewish, Christian and other independent schools of Kansas several years ago formed the Kansas Association of Non-Public Schools at the suggestion of a special committee of the Kansas Legislature in order to present the problems and the opportunities facing the 97% of non-public schools in Kansas which it represents.

We come before this Committee fully endorsing the concept of tax credits, which we feel to be the most effective way for government to lend its support to the citizen who constitutionally elects to send his child to non-public school.

Most certainly we do not imply a lack of quality in the fine public schools of our state. We feel we are partners with them in the education of all the children of Kansas. Through the years there has been a tradition of mutual help and respect between the public and non-public sectors of education, and we confidently expect this relationship to continue.

What the parents whose children attend non-public schools are asking is an education for their young boys and girls which is God-centered, in which a system of moral and religious values is an integral part of the learning process. Generations of Kansas parents and dedicated teachers and administrators have sacrificed their means and abilities to insure this realization.

But now inflation and high cost have severely limited the financial abilities of our people to adequately carry out their educational programs. We cannot overlook the compulsory nature of education—a child is required to attend school to age 16. That a parent elects to enroll his child in a non-public school is a constitutional right, and a right that satisfies the compulsory attendance laws of the state. But a constitutional right that is economically impossible has a certain hollowness.

We believe our schools do a great public service in addition to achieving our objectives. Our children will become citizens and leaders firmly holding to the moral values and the disciplines that have made this country great. It would be a public tragedy, not merely a personal one, if non-public education were allowed to founder because of failure of government to provide some limited measure of assistance.

We repeat our thanks to Congressman Winn and the Committee for the privilege of submitting this statement. That Kansas Representatives Roy, a Democrat, and Winn, a Republican, have spoken for the concept for tax credits is indicative of the non-partisan, honest concern for the well being of the non-public system of education. Most earnestly we urge the Congress to speedily enact this legislation.

Mr. **Winn**. This organization was formed several years ago and represents 97 percent of the nonpublic schools in Kansas. The association represents Catholic, Lutheran, Episcopalian, Jewish, Christian, and other independent schools.

For a number of years, private schools have faced increasingly critical financial problems which are forcing some of them to close their doors. Enrollment in nonpublic schools has declined from 14.3 percent in 1965 to 10.4 percent in the fall of 1971.

The Catholic archdiocese of Kansas City in Kansas reports, for example, that in my district, nine of their schools have closed within the last 5 years. These closings, coupled with other reductions, have reduced elementary school enrollment by 30 percent and secondary school enrollment by 20 percent in our archdiocese schools alone.

Nationwide, this means that in the fall of 1971 about 5 million boys and girls attended nonpublic elementary and secondary schools. During the same period, enrollment in the public schools increased by 5 million.

President Nixon has estimated that if most or all of the remaining private schools were to close or turn public, the cost to the public would be devastating. In 1970, he estimated that the cost to us would be $4 billion more per year in operations and an initial $5 billion more needed for facilities.

It is particularly important to note that most of this increase, if not all, would be borne by the most unfair, archaic, and overworked tax in this Nation, the property tax. One only needs to look briefly at the effect education has on the property tax to understand fully the severity of the problem.

The property tax is the major source of revenue for the support of public elementary and secondary education in this country. In many sections of this country, the cost of elementary and secondary education accounts for 80 percent of the revenue collected by the property tax.

Therefore, it is in the public interest to find some system that will help nonpublic schools survive. If we do not provide some relief, there is no doubt in my mind that a large majority of private schools will close during the 1970's. Private education will again become the exclusive preserve of the rich, and for all practical purposes, a healthy competitive school system will be eliminated.

What I am proposing today is a system of tax credits to the parents of children attending private, nonprofit elementary and secondary schools on a full-time basis. I hasten to add that this may not be the best way to assist these schools or even the most desirable, but it does appear to be the only constitutional method by which the Federal Government can provide assistance within the confines of recent court decisions.

My recommendations are embodied in H.R. 15689, which I introduced on June 26 and which is currently pending before this committee. The bill provides that a tax credit would be allowed for each dependent that qualifies not to exceed the lesser of $400 or 50 percent of the tuition paid.

I feel that tuition should be the only allowable expense because it is distinctive and easily identifiable for tax purposes. Most other out-of-pocket costs of sending children to nonpublic schools are in many cases out-of-pocket expenses of sending children to public schools.

The tax credit is preferable to granting a tax deduction. Since income tax rates impose higher tax rates in the upper income brackets, the benefits of a deduction are greater for higher income persons.

My proposal is designed basically to help those in the lower and middle tax brackets. Persons in upper income categories would receive credits on a sliding scale so that those persons least able to afford nonpublic education would receive the largest tax benefits.

Some may argue that a tax benefit for tuition paid to private schools would discriminate against the parents of children attending public schools because they pay no tuition and thus would be unable to utilize these deductions.

I submit to you that a major principle in our tax law is that a tax benefit is often granted to a taxpayer who is shouldered with or assumes a special burden. Medical expenses over certain limits are deductible, as are contributions. If a person buys a car or a house, the majority of his taxes and interest on his mortgage payments are deductible. We receive a personal exemption for each child or other dependent we support.

The number of examples could be multiplied, but the lesson should be clear: This approach does not discriminate against an individual who bears no such burden and therefore gets no benefit.

Experts have estimated that such a plan would cost the public less than one-tenth of the amount that would result if most of our nonpublic schools are forced to close their doors. While the benefits to families in nonpublic schools are obvious, we must not overlook the benefits to the Nation as a whole that would result from the passage of such legislation.

I want to thank the committee for hearing my presentation.

Mr. **Burke**. Thank you.

Any questions?

Mr. **Pettis**. I have no questions, but I wish to commend my colleague not only for his testimony but also for the legislation he has introduced to the Congress. I think he makes a very good point by focusing our attention on the fact that we would really be in a dilemma if all the private and parochial schoolchildren were placed in the public schools. We would have a national crisis; there is no question about it.

Mr. **Winn**. I thank my colleague.

Mr. **Duncan**. I would like to join in welcoming you to the committee and ask what would be your view on income limitations for those who would receive benefits from this legislation.

Mr. **Winn**. I really have not given too much study to that phase of it. I think there are several formulas that have been submitted to the committee, and I would have to say that I have faith in the committee to reach a fair decision.

Mr. **Duncan**. Thank you very much for your contribution to these hearings.

Mr. **Burke**. Mr. Brotzman?

Mr. **Brotzman**. I just want to welcome our distinguished colleague to the committee, and I well recall that in the not-too-distant past that I visited his district, and he was calling this problem to my attention and pointing out how much damage it would do to the educational process in his district. I want to congratulate him on his efforts and on the legislation he has introduced and thank him for his testimony.

Mr. **Winn**. Thank you. Two of the schools I pointed out to you in the low-income areas have since then closed.

Mr. **Brotzman**. I recall you mentioned they might close at that time.

Mr. **Winn**. They have closed. Thank you, Mr. Chairman.

Mr. **Burke**. Congressman, we appreciate your appearance here today and thank you very much.

Our next witness is the Honorable Louise Day Hicks, Congresswoman from Massachusetts.

On behalf of the committee, I welcome you as a colleague of mine from the Commonwealth of Massachusetts. You may identify yourself and proceed.

STATEMENT OF HON. LOUISE DAY HICKS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mrs. HICKS. I am Congresswoman Louise Day Hicks from the Ninth Congressional District in Massachusetts.

I would like to commend the committee for holding these hearings which I think are of prime importance to all the children and their parents across the country.

I should like to speak today in support of the Public and Private Education Assistance Act of 1972, H.R. 16141. I support this bill because it seems to me to represent a balanced, well-thought-out, and legal means of solving the pressing financial problems confronting our Nation's public and private schools.

The schools of America are responsible for the education of over 50 million young people each year. Some 45 million of those children attend public elementary and secondary schools, but over 5 million—that is, about 10 percent—attend nonpublic schools. In my own State of Massachusetts in the fall of 1970, 205,000 children were enrolled in nonpublic schools—14.9 percent of all enrollments in elementary and secondary schools in the State.

In the city of Boston, which I represent, over 35,000 children, or 27.1 percent of all children enrolled in school, were enrolled in nonpublic schools. In Philadelphia, 33.6 percent of the children are enrolled in nonpublic schools; in Chicago, 27.3 percent. Clearly, the education of all of America's children cannot be assured without taking into consideration the needs of this large majority whose parents have chosen to enroll them in nonpublic schools. Just as clearly, the education of the children in our cities is especially dependent on an overall solution to the financial problems faced by public and private schools alike.

These financial problems of course, have multiplied enormously in the last decade. Expenditures on the public schools of the Nation have risen 168.8 percent in the last 10 years, while enrollments have risen only 24.6 percent. Higher teacher salaries, inflation, demands for better educational services, attempts to improve the educational opportunities available to the disadvantaged children in our cities and our rural areas—all these have contributed to a rapidly rising demand for money for the schools, a demand which the traditional sources of revenue have been unable to meet.

Local property taxes remain the source of over half the school revenues in the Nation, and in one community after another those property taxes have reached untenable levels. The increasing frequency of school budget and bond issue defeats shows that the voters will no longer tolerate the regressive, unfair property tax as the source of needed revenue for the schools.

Nonpublic schools have faced many of these same problems. They, too, have seen their costs rising faster than their sources in income.

At the same time, their enrollments have actually been falling. It is estimated that, by 1980, enrollments in all nonpublic schools will fall to only 54.2 percent of 1970 levels, and enrollments in Catholic schools will be less than half what they are now.

There are a number of reasons for this enrollment decline, but one is easy to see: schools have had to raise tuitions to meet increased costs, and this has made it increasingly difficult for many lower and middle income Americans to exercise their option of choosing an alternative to the public schools. I do not believe that the American people will tolerate the dismantling of the system of public schools which they have labored so hard to erect, even though we have allowed schools in many areas to come inexcusably close to bankruptcy, and have actually seen schools close days, and even weeks, early for lack of funds, to the detriment of thousands of children.

But unless some way is found to bring relief to our Nation's nonpublic schools, it is quite possible that they will cease to exist altogether, at least for the vast majority of Americans who cannot afford to pay high tuitions to nonpublic schools on top of their tax contributions to the public schools.

The closing of these private schools would deprive this Nation of any alternative to the public school system. It would eliminate the variety and competition which have been an important element of our success in education. And it would certainly place an intolerable, added burden on the finances of the public school systems which would have to absorb the children from closed nonpublic schools. These burdens would be heaviest precisely in the core city school systems which are already so near collapse.

The Public and Private Education Assistance Act of 1972 attacks both sides of our educational finance crisis, and promises to help assure the health and progress of public and nonpublic schools alike. Title I of this bill would provide, for the first time, general Federal aid for the Nation's public elementary and secondary schools. If this act were fully funded, the Federal Government would reimburse each State for 10 percent of all non-Federal expenditures in the State on public education in any year, provided the State was spending at least that amount in State aid designed to reduce the disparities in financial resources among local school districts and thereby to equalize the educational opportunities available to the children all over the State. This is new Federal money; it would be in addition to Federal funds now spent on categorical programs which amount to about 7 percent of all expenditures on the public schools.

The Federal Government would, at last, be assuming its responsibility for assuring that schools across the Nation have adequate funds to provide an excellent education to their children; at the same time, it would be helping each State to assure that each local school district had equal financial resources, in compliance with recent court rulings which began with *Serrano* in California.

Title II of this bill would provide a credit of up to $200 against an individual's income tax for tuition paid to a nonpublic school on behalf of a dependent child. This credit would be granted to the child's parent, and would not involve an unconstitutional intermingling of church and state. It would permit the Government to make a substantial financial contribution to further its legitimate interest in the education of all children in the Nation. It would provide desperately needed aid to all nonpublic schools, including those operated by the Catholic Church. It would return to many less affluent parents a real choice in determining the type of education that their children will receive. And it would assure the continuation of the tradition of private investment in education which has long brought into the schools people and money which would, in the absence of the nonpublic schools, have to be provided by the already overburdened public elementary and secondary schools.

A tax credit will be of particular advantage to the low- and middle-income taxpayer. A tax credit which is a direct reduction from income tax liability provides a greater benefit than an itemized tax deduction. A deduction benefits higher income groups more than middle-income groups. For example, a $100 deduction benefits a taxpayer in the 14-percent tax bracket only $14; whereas a taxpayer in the 70-percent tax bracket would derive a tax benefit of $70 for a $100 deduction. In contrast, a tax credit reduces the taxpayer's tax liability $1 for each $1 of tax credit regardless of his tax bracket.

A tax credit would also enable those taxpayers who do not itemize their deductions to obtain the deductions since it would be subtracted from the final tax liability.

Also there are judicial and constitutional limitations on providing public funds to nonpublic schools. This legislation to provide tax credits for the expenses of tuition would be wholly permissible.

We cannot permit our nonpublic school to die. Monopoly in education stifles innovation and creativity. We must reverse the current trend. Enactment of this legislation will be a giant step toward achieving this objective.

Mr. BURKE. Thank you, Congresswoman.

Are there any questions?

On behalf of the committee, we wish to thank you for your appearance here today. With your background on the school committee of Boston and on the Boston City Council you are well acquainted with the problems of the property taxpayers. I believe you are considered an expert on this problem and you have made an excellent statement here today.

I would like to ask you one question. I understand in the city of Boston approximately 40,000 students are attending private schools. If these schools close, assuming an average of about 500 students for each school, that would mean we would have to build about 80 school buildings in Boston to just house these students who were in private school, is that correct?

Mrs. HICKS. You are correct, Congressman Burke, and the impact of the closing of the schools would be so great the city of Boston would go into bankruptcy. We are having great difficulty meeting the demands of the public schoolchildren in getting a building program into operation. Actually, the financial impact would be great, and the overcrowding which now exists in the schools would even be worsened, so the situation would be critical in a city that is in dire need of having more aid brought to them.

Mr. BURKE. I heard an unconfirmed rumor that on November 15 the public schools of Boston will face the possibility of closing, because I understand they have borrowed up to the limit allowed by the law and have not sufficient money to run for the rest of the year unless something is forthcoming.

Mrs. HICKS. Yes, $52 million has been withheld from Boston for failure to comply with the racial imbalance law. If something isn't done immediately, Boston certainly will be in a crisis financially and educationally.

Mr. BURKE. I understand the property tax rate was announced the other day; what is the increase in the tax rate per thousand of assessed value?

Mrs. HICKS. $196.70 per thousand. The impact if we close the private and parochial schools in Boston, that is the nonpublic schools, would be an increase of $20 on the tax rate which would bring it up to about $216.70. Today that has become unbearable.

Mr. BURKE. What is the unemployment situation in Massachusetts; 7 or 8 percent?

Mrs. HICKS. Just about one of the highest in the country. Unemployment is a serious problem in the whole State of Massachusetts.

Mr. BURKE. If the tax rate went up another $20, this would mean more industries closing down, higher unemployment, higher welfare, all kinds of problems that we would be unable to cope with; is that correct?

Mrs. HICKS. Yes, and not only that, but it would also prevent new businesses from coming into Massachusetts because of the higher tax rate and new business would produce new jobs. Thus, an increased tax rate has a many-pronged attack on the finances of Boston caused by the closing of parochial and nonpublic schools.

Mr. BURKE. This is something we cannot postpone for future years; it is a problem we face in the immediate times.

Mrs. HICKS. Yes. The situation is very critical in all the great cities across the country, and I think if Congress does not act on this, they have done a great disservice to the people, particularly those living on fixed incomes. It is almost impossible for them to maintain their homes where we have had such a low building program because of the impounding and freezing of funds by the President.

This freezing of funds has been reflected in our building program, and that is why we have to keep many of our senior citizens in the homes they now own. They will be unable to stay there if the taxes are increased any further amount.

Mr. BURKE. The committee appreciates your appearance.

Mrs. HICKS. Thank you, Mr. Chairman.

Mr. BURKE. Our next witness is Hon. Congressman William J. Keating, of Ohio.

Mr. BETTS. I would like to welcome our colleague from Ohio. I notice in looking over his statement he has dwelt on some legal aspects of this proposal, and I would like to inform the committee that Mr. Keating comes to us with a distinguished career as a common pleas judge in Hamilton County, Ohio. I am sure with this judicial experience as a background he will be able to present a statement which will be immensely beneficial to the committee.

I thank you for your appearance here, Bill.

STATEMENT OF HON. WILLIAM J. KEATING, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. KEATING. Thank you, Congressman Betts. I am grateful for your remarks.

Mr. Chairman, it is always an honor to appear before this distinguished committee. As with other problems that have come before you, the question of aiding nonpublic schools has reached a crisis situation.

On January 19, 1972, I introduced legislation that would allow for a $100 tax credit for parents who are sending their children to nonpublic schools. It is not my intention today to enter into a debate on whether the credit should be $100 as in my bill or $200 as in the chairman's bill; but instead on the principle and the need for immediate help to save pluralism in our Nation's educational system.

In 1965 there were approximately 6,300,000 students attending nonpublic schools in grades one through 12. Five years later that number had dropped to 5,500,000.

In the Cincinnati area that I represent the largest number of nonpublic schools are associated with the Cincinnati archdiocese. During the 1967 school year there were 195 schools in operation with a total enrollment of 92,125. During the 1971 school year the number ofschools were down to 177 and the enrollment down to 75,119.

In the State of Ohio last year, 40,000 students left the nonpublic school systems. As the office of education estimates that it cost $850 per pupil, the 40,000 students cost the taxpayers of Ohio an additional $34 million. These additional students strain the already overcrowded public school system.

As more and more nonpublic schools are forced to close their doors we face a situation where only the rich will have freedom of choice in the important matter of their child's education.

Today more school systems are in serious trouble due to financial problems and overcrowded conditions. Recent court decisions in Texas and California over the question of property taxes being used for school financing indicate that the future is going to be difficult. If the number of nonpublic school students who are forced to enter the public schools continues to increase, we will only experience greater difficulties in our public schools. What we need to do is to reverse the trend and provide diversity and choice in education.

When State legislatures first started to look into the area of assisting nonpublic schools by supplying transportation and essential materials there was considerable controversy. But now the need is apparent, and this was seen in the Ohio legislature when a tax credit bill was passed without a single vote in opposition. The effectiveness of the Ohio tax credit bill is still in doubt since the Ohio statute is currently being reviewed by a Federal court in Ohio. A similar statute in Minnesota has been ruled constitutional.

Let me for a moment turn to the legal question that is involved with this issue. There are those who desire an early demise to the nonpublic school system and feel that any assistance is a major threat to the public school system and unconstitutional. This view greatly limits the role that nonpublic education should play in our society. As a lawyer, former judge, member of the House Judiciary Committee, but most important a parent, I do not share this opinion.

The court decisions in the field have laid down two basic tests for aid to be constitutional: One, that the aid is secular in both purpose and effect; and two, a criteria that was made clear in the decisions of last fall, excessive entanglement.

The tax credit would be secular in that it would go directly to the parent, and be for the education of his child. The fact of the matter is that there is no such thing as Jewish algebra, or Lutheran chemistry, or Catholic economics. The basic skills that our children receive in school have nothing to do with sectarian beliefs.

Mr. Chairman, I would like to insert into the record at this point the cost-per-pupil budget of the Catholic school system in the State of Ohio. It shows that only 3.41 percent of the total budget was spent on religious instruction.

State of Ohio—secondary schools—Catholic school system

	Percent
1. Total instructional	53. 86
(a) Secular	50. 45
(b) Religion	3. 41
2. Administrative	14. 50
3. Debt services	2. 10
4. Capital expenditures	3. 54
5. Plant operation and maintenance	12. 54
6. Other operating expenses	3. 89
7. Faculty residence	3. 55
8. Food programs, health services, and transportation	6. 04

There are those who would argue that the mere presence of religious objects in the school make the education sectarian. Yet if we were to take this argument to its logical conclusion, no Federal money could be given to the construction of a home or hospital that displays religious objects. The tax credit legislation does not establish a religion, but merely makes it possible for any citizen to freely exercise his free choice of belief.

The other criteria spelled out in the *Lemon* decison last fall is entanglement. The Pennsylvania statute that the court ruled unconstitutional provided for payment directly to the schools are required the schools to maintain detailed accounting procedures that separated the cost of secular and religious expenses. The Rhode Island statute that the court ruled against provided for payments directly to the teachers and directed the State Commissioner of Education to require eligible schools to submit financial data which shows how much was for religious activity. Rhode Island further forbids teachers being paid under the act to teach religious courses.

The tax credit does not have these entanglements. The credit is given directly to the parent, and the only requirement for the school is that they maintain records as always for taxation purposes and that they meet the antidiscrimination laws of the land.

The President's Commission on School Finance, pointing to the fact that one in 10 school age youngsters attend nonpublic schools, recommended the enactment of constitutionally allowable aid to nonpublic schools.

If one looks at the policies of the nations in the free world, the overwhelming majority do not cut off funds for the study of secular subjects in schools where children can also study religion and moral values.

Today in England, a substantial proportion of the schools remain private and are able to continue because of legislation which enables them to receive public financial support. In France under General De Gaulle the General Assembly passed legislation to give financial assistance to private schools. In Germany today, nearly 55 percent of West German students attend denominational schools. These and other countries in the free world permit tax dollars to go to non public schools.

If no action is taken in the United States, there will be a monopoly in the education field. Whenever there is a monopoly there is usually a lack of creativity, a lack of innovation, and a lack of excellence. We cannot allow this to happen in an area of education that is so important to the future of our Nation.

Tax credit bills that have been introduced in the Congress will not challenge or destroy the significance of public education. The economic benefit will improve both the public and nonpublic sectors. As we search for new methods of school financing, this type of legislation is necessary and appropriate. It is my hope that this committee will make the enactment of this legislation a high priority.

I would like to attach to my comments the "Nonpublic Schools Tuition Costs in Cincinnati and Hamilton County."

Mr. Burke. Without objection, it is so ordered.

(The document referred to follows:)

NONPUBLIC SCHOOLS TUITION COSTS IN CINCINNATI AND HAMILTON COUNTY

	Tuition	Lunch and books
Archdiocesan schools in Cincinnati:		
Grades 1 to 6	$100	Lunch and books extra.
Grades 7 to 12	415	Do.
Hillsdale:		
Grade 7	1,675	Lunch and books included.
Grade 12	1,900	Do.
Country Day:		
Grade 1	1,250	Do.
Grade 6	1,650	Do.
Grade 12	1,850	Do.
College Preparatory School:		
Grade 1	1,150	Do.
Grade 7	1,675	Do.
Grade 12	1,900	Do.
Summit Country Day School:		
Grade 1	1,050	Lunch and books extra.
Grade 7	1,075	Do.
Grade 12	1,200	Do.
St. Ursula:		
Grade 1	480	Do.
Grade 7	480	Do.
Grade 12	580	Do.
Ursuline Academy: Grades 9 to 12	650	Do.
St. Xavier: Grades 9 to 12	600	Do.
Yavneh Day School:		
Grade 1	650	Do.
Grade 7	750	Do.

Mr. Keating. I thank the committee and the chairman for your courtesy.

Mr. Burke. Any questions? Mr. Pettis?

Mr. Pettis. No questions, but I would like to commend my colleague for his statement, and particularly for the logic that he pursues in this matter of aid by comparing it to other Federal programs.

Mr. Keating. Thank you.

Mr. **Duncan.** I would like to welcome you to this committee and commend you for the great work you have done on this subject; I know you have by your statement and by legislation you have introduced in the Congress, and we thank you for your great contribution to these hearings.

Mr. **Keating.** I thank my colleague, Mr. Duncan.

Thank you, gentlemen.

Mr. **Burke.** Thank you, Congressman Keating.

Our next witness is Congressman Peter A. Peyser from New York.

STATEMENT OF HON. PETER A. PEYSER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. **Peyser.** Thank you. I appreciate the opportunity of being here this morning.

My remarks will be very brief.

In the first place, I am pleased that this bill and the concepts of it are being discussed. I am on the Education and Labor Committee and, as this does deal with the area of education, and I realize it is probably an unusual request, I would hope that the final markup of this proposed legislation in the Ways and Means Committee, would include at least some members of the Education Committee, because basically I support very much what is in this bill.

I particularly support the areas of the Federal Government getting into, in effect, what is general aid to education because of the situation dealing with our local property taxpayers, which I am sure has been well covered here, and the problems they have been living under with ever-increasing costs of public education.

I am also particularly interested in the aid to nonpublic schools. In my own area I have seen the situation particularly in the area of parochial schools closing down.

I have met with Sister Eileen Ford, superintendent of schools in the Archdiocese of New York, and have gone over in some detail with her the realistic problem of these schools not being able to survive because of the inability of the parents to pay the ever-increasing costs of education in those schools.

So the concept of tax credit for these people is something I very much support.

There is something I do wonder about and hope will not happen, going back to what is title I in this bill. I hope that the program of general aid will not necessarily adversely affect such things as title I of the Elementary and Secondary School Act of 1965 as amended. It would be regretful if compensatory legislation and other key categorical programs would be lost in the educational system because these are programs that are of great benefit to all education throughout this country. It would certainly be my hope that these programs would not be eliminated through title I of this bill. I would hope that the Ways and Means Committee will consider, when you come to the markup, as I say, and even if it is in an informal way having members of the Education and Labor Committee, who have been involved in these programs for a number of years, intimately involved with your committee in the final working out of this bill.

Basically I think the legislation is on the right track, and I support what is happening here. I think there is a desperate need for this program.

That is my brief statement, and I thank you very much for hearing me on it.

Mr. BURKE. Thank you, and I must say we have three members on this committee who have great expertise in this area, but I am sure our chairman will have the same rapport he has had in the past when working on legislation that might affect your committee.

Mr. DUNCAN. I welcome you to the committee. Many of the statements have been repetitious, but you have given us some new thoughts. I know you have done a great deal of work in this field, and we thank you for taking your time to come and visit with us today.

Mr. PEYSER. Thank you very much.

Mr. BURKE. Thank you for your appearance, Congressman Peyser.

The Honorable Donald D. Clancy of Ohio is our next witness. Step forward, Mr. Clancy, and you may proceed.

STATEMENT OF HON. DONALD D. CLANCY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. CLANCY. Mr. Chairman, I am especially grateful to you for scheduling this hearing. Last March and April, I urged that such a hearing be conducted because many nonpublic schools face the prospect of closure. American schools have just passed through a crisis but an element of that crisis lingers on and the legislation you consider here today contains, I believe, the solution.

During the last 10 to 20 years, our schools had to expand to accommodate the population explosion which followed World War II. America had neither enough teachers nor classrooms for all of its children. We responded to the crisis and today we have the most literate and educated society in history. Colleges were encouraged to turn out more teachers. Bond issues were passed and bigger schools were built. Teachers and administrators' salaries were increased to induce more people to enter the education professions and, although teachers still are not among the high-paying occupations today, their salaries and fringe benefits generally assure them of a secure and comfortable future.

But solving the crisis took its toll. Taxpayers are beginning to reject bond issues for some of the accoutrements of education, like auditoriums, football stadiums, and even new classrooms. In 1971, voters approved only 47 percent of the school bond issues compared to 75 percent in 1965. New college graduates with education degrees in hand are discovering that there are few teaching slots available and they cannot always teach the courses they would like at the salaries they expected.

As taxpayers are deciding they can no longer afford to pay more for education, school enrollments are leveling off. The birthrate is falling and, by 1980, it is estimated that the enrollment will have increased only 3 to 8 percent. Meanwhile, the gross national product is expected to climb 55 percent and consequently more money will be available to pay off the bond issues and education costs which accrued during the last decade.

The financial squeeze which has begun to affect public schools was first felt several years ago by America's nonpublic schools. And, it is in this realm that the crisis exists today. From 1966 to 1971, the nonpublic-school enrollment declined by 1.6 million students, or 23 percent, while the public school enrollment rose by 5 million and 12 percent.

The American Enterprise Institute has observed: "From all signs, it appears that we may be facing a demise of most nonpublic school education in the United States within not too many years . . ."

America needs its nonpublic schools. Educators and government officials down through the years have warned against a monopolistic education system. There are only 6.1 million students in nonpublic elementary, secondary, and private college systems today. Their parents and guardians are having a difficult time keeping them there because they cannot afford to pay both high taxes for public schools and the higher tuitions which nonpublic schools must charge.

As a result, private schools are closing at a rate of almost one-a-day. In the last 2 years, nearly 1,000 nonpublic elementary and secondary schools closed their doors forever. These nonpublic students usually transferred to public schools, often adding to overcrowded conditions there.

I am particularly conscious of the nonpublic school crisis because more than 27 percent of the student enrollment in my hometown, Cincinnati, are in parochial and private schools. I am painfully aware of the sacrifices which parents are having to make in order to send their children to schools of their choice, and the penny-tight budgets under which those schools are laboring.

If the trend continues, President Nixon has said that the added burden on public funds by 1980 would exceed $4 billion annually to operate public schools and $5 billion for additional facilities.

You are considering here and I have introduced a bill which would help keep nonpublic schools open. These proposals would give a tax credit to parents or guardians of nonpublic school students. Your committee staff has said the bill you are considering, H.R. 16141, would cost $584 million in lost taxes per year. Even that, you must admit, is a much less expensive solution than allowing nonpublic schools to close and spending $9 billion more annually for public schools to accommodate those evicted nonpublic students.

H.R. 16141 offers a tax credit of $200 per elementary and secondary student. My bill, which I urge you to consider, would give a tax credit of $125 per elementary and secondary student and $600 per college student.

Of course, the beauty of tax credits is that they apparently do not violate the Constitution. They do not constitute a direct payment to the church school. They are not a subsidy. Neither of these tax credits is sufficient to pay all of the costs of a non-public-school student. But I believe that the credit which I propose, small as it is, is sufficient to encourage and enable most parents to keep their children in the private and parochial schools.

It appears that the public schools have made the adjustment to a burgeoning student body. They are mainly dependent, as they should be, on local and State revenues which pay 90 percent of the school costs. If public school administrators do not have to accommodate 6.1

million more students, who are now in nonpublic schools, they probably can manage on their current budgets. Therefore, I ask you to approve a tax credit of some form, either as I suggest in my bill or as proposed in H.R. 16141. Saving the nonpublic schools will save the public schools.

Mr. BURKE. Are there any questions? Thank you, Mr. Clancy. The committee appreciates your testimony.

Our next witness is a Member of Congress, the Hon. Jack Edwards of Alabama. We welcome you to the committee, Mr. Edwards, and we are most interested to hear your testimony.

STATEMENT OF HON. JACK EDWARDS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALABAMA

Mr. EDWARDS. Mr. Chairman, members of the committee, I am here today to speak in support of the goals of title II of H.R. 16141. This part of the bill would give parents of students in nonpublic elementary and secondary schools a credit of up to $200 against their income taxes for tuition paid for their child's education. Aid to nonpublic schools is a subject of great importance in our Nation today, and I commend this committee for its efforts in this vital area.

Approximately 5.2 million students in America, or one tenth of our children, receive their education in private and parochial schools. Many of these schools are in serious financial straits. Should most of our nonpublic schools collapse, the result would be an influx of about 5 million students into a public school system already straining at the seams in many areas. A bill of $4 to $5 billion would be presented to the American taxpayer each year to pay for the education of these students in the public school system. Comparing this increased burden on the taxpayer to the estimated annual cost of this tax credit plan of $790 to $970 million, it can be readily seen that the current proposal is less expensive than the cost of absorbing nonpublic education into the public system.

Nonpublic schools perform a public service by educating a significant portion of American students. Nonpublic schools provide a stimulating diversity to our over-all educational system. These schools enable the parent and the student to exercise a wider choice in educaional pursuits. They serve as healthy competition for traditional public education.

Tax benefits are traditionally aimed at one or both of the following: to make our system of taxation fairer by recognizing special burdens or to provide an incentive for actions considered to be in the public interest. Both of these criteria are met by a tax credit for nonpublic school tuition. A tax credit may not solve all the problems of nonpublic school parents, but it should help significantly.

For these reasons, among others, I strongly support the purposes enunciated by title II of H.R. 16141. Schools are our best hope for a better society. All steps should be taken to preserve an important part of our educational structure, the nonpublic school.

Mr. BURKE. We thank you, Mr. Edwards, for your statement and for coming to the committee. Are there any questions of Mr. Edwards? If not, we thank you, sir.

Our next witness today is Hon. Henry P. Smith III, our colleague from the State of New York. If you will identify yourself for the record, we will be glad to recognize you, sir.

STATEMENT OF HON. HENRY P. SMITH III, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. SMITH. Mr. Chairman, I wish to indicate my support for legislation presently pending before your committee which would provide financial assistance for families of children in private, nonprofit elementary or secondary schools in the form of tax credits.

We need our nonpublic schools and they need our assistance. The financial stability and historic right of private schools in this Nation has become jeopardized in recent years because of the rising costs associated with providing quality education. Today, over 5.2 million students are enrolled in nonpublic schools, about one out of every 10. In my own State of New York, nonpublic schools educate nearly 750,000 pupils in over 2,000 schools. If our public school system, which at the present time is also being pressed financially, were to absorb an additional 750,000 students, the cost to the taxpayers would be at least $2 billion.

I need not point out further that if the private and parochial schools were to close their doors the economic burdens placed on the public school systems and local property taxpayers would be unbearable.

I have introduced in the House of Representatives legislation which would enable us to preserve the right of free choice in the type of education our children receive. My bill, H.R. 15355, would allow parents—of children attending any private nonprofit elementary or secondary school a tax credit for tuition costs. The amount of the credit per dependent would be the lesser of 50 percent of the tuition paid or $400. This form of assistance will be most effective in helping those people in middle income levels, $7,000 to $15,000. Tax credits, as opposed to tax deductions, will provide maximum benefits to those who are in greatest need.

President Nixon's Commission on School Finance in March of this year issued its final report recommending serious consideration of tax credits, tax deductions, tuition reimbursements, and other alternatives for providing assistance to our nonpublic schools. In April, the President's Panel on Nonpublic Education recommended programs of special reductions in Federal income tax for families that pay nonpublic school tuitions. The President himself in recognizing the plight of our nonpublic schools called the tax credit idea "a very active option."

The time for action is now. Further delays may allow irreparable damage to our educational system as each day sees the closing of one more of our nonpublic schools. I am confident that your committee will recognize the undeniable question of the future of our nonpublic schools and will recommend immediate assistance.

Thank you.

Mr. BURKE. There are no questions. Thank you for your very interesting presentation.

We have with us today Hon. Mario Biaggi, our colleague from the State of New York. We are glad you come to give us your views today. Please identify yourself for the record and you may proceed.

STATEMENT OF HON. MARIO BIAGGI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Biaggi. Mr. Chairman, members of the committee, I am pleased to have this opportunity to testify in support of my bill, H.R. 16273, the Public and Private Education Assistance Act of 1972. I am also pleased to join with the over 130 cosponsors of similar measures in the House.

Our public and private educational systems are severely strapped to pay their bills. Private schools, particuarly Catholic schools, have been slowly closing. In the last decade there was a net drop of almost a half a million children in nonpublic school enrollment. There is no doubt that this trend will continue.

At the same time, our public school administrators have been hard pressed to obtain additional funds to educate the millions of new children coming into the public school system. During the last decade as the private school enrollment dipped 8 percent, the public school rolls went up 23 percent.

In New York City, all our public schools are overcrowded. The city cannot build schools fast enough to take care of the overload. At the same time, more and more private, and particularly Catholic, schools are being forced to cloes their doors due to high costs of operation. These children can only go into the public school system.

Moreover, many of the schools closing their doors in New York are for poor children in poverty areas. The churches can no longer sustain the high costs of educating children.

This bill is more a matter of equity than anything else. It costs over $800 per pupil to operate public educational systems in our major cities. This tax credit bill will mean that the taxpayers will be educating children for a maximum of $200.

I do not see any conflict between church and state here. The tax dollars are going to pay for an education, not to build a church. It is far better that we pay for this education in this manner than be forced to assume the additional burden of the private school children in the regular school system—a burden that in cases like New York cannot even be assumed.

Let me address myself for a moment to the second major aspect of this bill.

In communities across the country taxpayers are refusing to vote more money for schools. Their property taxes are already at the highest levels and further increases would be unbearable. Local administrators cannot build new schools, hire new teachers or teach more children without the additional funds. My bill will set aside $2.5 billion to establish a public education trust fund to help relieve local property owners of the burden of paying for public education.

This will help not only the individual homeowner, but apartment dwellers as well, since the real estate taxes on all property is used to help pay for public school education.

Mr. Chairman, there is a great sense of immediacy here. Our schools are in a crisis. More money is needed if we are going to educate our children properly. Millions of parents are looking toward Congress for the much needed relief from rising private school tuition costs and already high property taxes. This measure will provide that relief and respond to the hope of parents everywhere for a better educational system.

Mr. BURKE. Thank you, Mr. Biaggi. If there are no questions, the committee appreciates your coming to us here today.

We are glad to have with us today Hon. Lawrence J. Hogan of Maryland. Please identify yourself for the record and you may proceed.

STATEMENT OF HON. LAWRENCE J. HOGAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. HOGAN. Mr. Chairman, having introduced a similar bill, I strongly support the concept of legislation being considered in these hearings to provide a tax credit to individuals for educational expenses. Nonpublic schools are having serious financial problems. Low- to middle-income parents are having a difficult time meeting the increasing tuition costs of nonpublic schools as high taxes and inflation continue to make inroads in their earnings.

The President's Panel on Nonpublic Education has reported that nonpublic school enrollment has been declining at a rate of 6 percent a year. In addition to nonreligious private schools, there are of course many Jewish and Christian schools who are facing serious financial problems. For example, Roman Catholic schools, which comprise the bulk of nonpublic schools, have been forced to close hundreds of schools in the face of increasing costs. A major problem facing these schools is their inability to compete with public schools in meeting the salary demands of lay teachers. Compounding the problem is that the number of lay teachers has steadily increased as the number of members of religious orders engaged in teaching has steadily decreased. People of low and middle income who want their children to have the benefits of religious instruction as well as academic instruction are finding it next to impossible to meet both the increased tuition costs of the parochial schools and the ever-increasing property taxes needed to support public schools. Increasingly, these parents are being forced to shift their children to the public school system. This trend, if it continues, will seriously aggravate the existing critical situation faced by public institutions.

We must not allow our nonpublic schools to die. They have been making an important contribution to American education and to society as a whole since the founding of this Nation and play a special role in education, especially in our urban areas. In Philadelphia enrollment in nonpublic schools represents 33.6 percent of all students, in New York 24.3 percent and in Chicago 27.3 percent. In the inner city, the nonpublic school is often the only opportunity for quality education, in addition to the salutary influence it has in the community. And yet, these schools are probably in the greatest danger of closing for financial reasons.

In my opinion, Federal tax relief for the individual family is the best way to help assure the continuance of our private system of education. It would ease the pressure on the public school system by enabling more parents to send their children to nonpublic schools for the first time or to assure their continuing attendance at such schools. The use of the tax system to give relief to parents is preferable to grants and subsidies to the nonpublic schools themselves. Aside from the constitutional problems such direct aid would involve, there would be no reason for Federal involvement in the educational programs of the nonpublic schools, since the parents, not the schools, would be the recipients of such benefits. Federal control of the curriculum and activities of the private school, especially the religiously oriented schools is a situation which must be avoided.

Within the framework of tax relief, I believe the tax credit approach for all educational expenditures, including trade schools and higher education, as proposed by my legislation, is the best option. It is superior to a tax deduction for two reasons: (1) It may be taken even when the taxpayer does not itemize his deductions, and (2) it provides a greater benefit to low- and middle-income taxpayers than an itemized deduction.

My bill would provide a tax credit for educational expenses equal to the sum of 100 percent of so much of such expenses as does not exceed $200; or, 75 percent of so much of such expenses as exceeds $200 but does not exceed $500; or, 25 percent of so much of such expenses as exceeds $500 but does not exceed $1,500.

Under our present tax laws we have numerous examples of allowable deductions for private investment to serve the public good. Deductions for charitable contributions to religious and educational institutions are particularly apt. Present tax laws also permit persons who pay taxes to a State or local government for various purposes to deduct these taxes on their Federal returns. Businessmen benefit from deductions for numerous expenses incidental to their activities. Certainly, payments made by parents for education ought to receive similar treatment.

Those who criticize the revenue loss involved in this proposal are shortsighted. If nonpublic schools disappeared from the scene, it is estimated that public school operating costs of $3 to $5 billion annually would be added to the burden of the taxpayer. It is estimated that the enactment of legislation such as my bill, H.R. 14595, would result in an annual revenue loss of $584 million with the bulk of the relief occurring in the middle-income groups. If dollars were the only consideration, these figures would be argument enough for the credit.

But dollars are not the only consideration. Americans want to retain the pluralism in our society that has been the hallmark of its democratic institutions. Our society wants and deserves alternatives to public education. This legislation is a major step in assuring that we retain them in the future. I urge favorable consideration by this committee.

Mr. BURKE. Thank you for your fine statement, Mr. Hogan. Are there any questions? If not, our thanks to you for coming to the committee.

Our next witness today is Hon. James J. Delaney of New York. We welcome you to the committee. Please identify yourself for the record and you will be recognized.

STATEMENT OF HON. JAMES J. DELANEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. DELANEY. Mr. Chairman, and members of the committee, I appreciate this opportunity to express my views on legislation which would enhance and encourage a pluralistic system of education.

This is a matter of vital importance to our Nation, and a principle for which I have been fighting for more than 10 years.

My bill, H.R. 16555, is very similar to legislation you and other members of this distinguished committee have introduced, Mr. Chairman. It provides a Federal matching payment of 50 percent to the States to assist in equalizing educational opportunities in public schools throughout the Nation. Also, it allows a tuition tax credit of up to $200 per year with respect to each child attending nonpublic elementary and secondary schools.

Educational diversity is a significant natural resource. It is vital to our democratic system of justice. Enactment of my proposal would help to assure a vigorous competitive system of education in this country. At the same time it would protect the inalienable rights of all parents to freely choose the system of instruction they consider best for their children.

The demise or destruction of the nonpublic school system would do irreparable harm to the national interest. It is imperative that this be prevented.

Presently, more than 5½ million students are educated in America's nonpublic elementary and secondary schools.

In my own area, the Catholic school system in New York City alone educates some 300,000 students. This group of pupils is larger than any single urban public school system in the United States, with the exception of New York City itself, Los Angeles, and Chicago.

In New York State, according to the U.S. Office of Education, some 837,000 students attend nonpublic schools.

It is obvious that the closing of these schools would be a devastating blow not only to the parents and schools involved, but it would also impose a tremendous additional burden on all American taxpayers.

Based on the most recent statistics published by the U.S. Office of Education, it would cost taxpayers $438.3 million annually to absorb New York City's Catholic elementary and secondary school students.

If all nonpublic school students in New York State were placed in the public school system, the estimated yearly cost to the taxpayers would be approximately $1,147 million.

In the event all nonpublic schools in the Nation were forced to close, the additional burden on America's taxpayers would be nearly $5 billion annually.

It must be emphasized that these figures are estimates based on the most recent available statistics, which are a year or two old. We all know that costs are rising throughout the economy. The costs of elementary and secondary education, whether in public or nonpublic schools, is no exception.

This is borne out by the fact that when I first introduced my tuition voucher proposal in 1962, the national average cost for current expenditures per pupil in public elementary and secondary schools was $419. For the 1970–71 school year this figure was estimated at $858. This shows a rise of more than 200 percent in 10 years.

However, these figures do not reflect differences in costs in various school systems throughout the country. Also, they do not take into account the cost of capital outlays and interest expenses involved in constructing the school buildings necessary to teach these students.

It is a well-known fact that nonpublic schools can educate children at significantly less expense than public schools. Therefore, the continued existence of nonpublic schools works as an effective brake on the rising costs to taxpayers of public school expenses.

But far more than costs are involved. The overriding principle of freedom—the underlying basis for our system of government—is at stake.

All parents have a constitutional right to choose nonpublic schools for the education of their children, so long as those schools satisfy the compulsory educational laws of the States. However, not all parents can afford to exercise this right.

Citizens who choose education in nonpublic schools are also required to support public schools with their taxes. They do not seek to be excused from responsibility to financially support public education. Rightfully, they do look to the Government for a modicum of assistance to enable them to freely exercise their right to choose the form of schooling they prefer.

Our Government has a long history of assisting citizens to satisfy their needs and aspirations in many other areas of life. Therefore, it is is reasonable to expect it to assist those individuals who wish to carry out their fundamental right to educate their children in the schools of their choice.

The modest aid provided by this legislation will help to give full meaning to this Nation's fundamental commitment to freedom for all its citizens. This bill and related measures are not the final answer to resolving the intensifying crisis in our pluralistic system of education. However, it is a significant step in the right direction, and I strongly urge that a bill along these lines be reported out as quickly as possible for action by the House.

Mr. BURKE. The committee thanks you for giving us your views here today. If there are no questions, thank you, sir.

The committee record will remain open for receipt of data and material until the close of business Friday, September 15, 1972.

The committee now stands adjourned to meet at 10 a.m., Monday for executive session, and the members of the committee will be informed about the precise subject matter prior to that time.

The committee stands adjourned until 10 a.m. Monday morning.

(Whereupon, at 12:15 p.m., the committee adjourned the public hearings.)

(The following material was supplied to the committee for inclusion in the record:)

U.S. COMMISSION ON CIVIL RIGHTS,
Washington, D.C., September 6, 1972.

Hon. WILBUR MILLS,
Chairman, Committee on Ways and Means, House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: I am submitting the enclosed statement on H.R. 16141 with accompanying exhibits on behalf of the United States Commission on Civil Rights.

The principal concern of the Commission is that H.R. 16141 contain strong protections against discrimination in the use of Federal financial assistance made available in Title I and prohibit tax credits to individuals paying tuition to racially segregated private schools. The Commission's statement also reviews the record of the Internal Revenue Service in enforcing the decree and policy of the *Green* v. *Kennedy and Green* v. *Connally* decisions prohibiting tax exempt status to private segregated schools. The Commission recommends that the IRS' compliance review responsibilities be turned over to the Secretary of Health, Education, and Welfare, who upon ascertaining that a private school was racially segregated, would certify that fact to the Commissioner of Internal Revenue who would then take action to withdraw the tax exempt status of the school. We feel that this allocation of responsibility would relieve the IRS of an additional enforcement burden and place the responsibility in a Department which possesses both expertise and resources with which to make the necessary compliance reviews.

I hope the statement and accompanying materials will be of use to your committee and staff in studying H.R. 16141. Thank you for receiving it.

Sincerely,

JOHN A. BUGGS,
Staff Director.

Enclosures.

STATEMENT OF HON. JOHN A. BUGGS, STAFF DIRECTOR, U.S. COMMISSION ON CIVIL RIGHTS

Mr. Chairman. I am John A. Buggs, Staff Director of the United Staff Commission on Civil Rights. I wish to thank you for this opportunity to present the Commission's views on H.R. 16141, the "Public and Private Education Assistance Act of 1972."

The Commission on Civil Rights has completed this summer a new study on issues of disparities in school finances—a problem which H.R. 16141 attempts to remedy through a formula providing Federal financial assistance for State school equalization payments. This study, which was conceived as the fourth report in our series on Mexican American Education, is limited to the school finance system in the State of Texas. It is supplemented, however, by an extensive review and analysis of the legal and constitutional issues involved in equalization of school finance systems. I would like to offer advance copies of the study and the legal analysis to the Committee for its further study and use.

The Commission is not prepared at this time to offer specific criticisms of the formula developed in H.R. 16141 for Federal assistance for State equalization payments. It is enough to say at this time that our studies so far have indicated to us that there are many unanswered questions in this field. For example, will this formula discourage States from increasing their total expenditures for public education? What encouragement is provided to equalize public education expenditures *among* the States? How are States to establish an equitable property assessment system which will accurately measure the relative wealth of school districts? Will such a formula tend to benefit or penalize minority group children or will the results for them be neutral? Should equalization consider the relatively greater educational needs of disadvantaged children? Should equalization also take into consideration the heavy tax burden on cities to provide for other services than education? I am not sure that we know the answers to questions of this nature. Therefore, the Commission not only urges more consideration of these problems, but we plan to devote a portion of our staff resources to studying them this fall and winter.

Our immediate concern is that whatever form the legislation proposed in H.R. 16141 takes, that there be adequate assurances and protections against discrimination on the basis of race, color, religion, national origin and sex.

While I am pleased to note that Title I does contain a specific prohibition against discrimination in Section 106, we do have several specific comments to offer.

Section 106(a) prohibits discrimination in programs funded in whole or in part with funds made available under this title.

It should be clearly understood that this nondiscrimination provision is not limited solely to programs actually funded with Federal monies. Since the financial assistance provided to State equalization payments will benefit the entire spectrum of State and local educational programs, it follows that the State must assure nondiscrimination in all its educational activities.

Section 106(b) requires that the Secretary of Health, Education, and Welfare shall notify the Governor of a State found to be in noncompliance of that fact and await a reasonable length of time before undertaking corrective action.

It is our view that it is unnecessary and inconsistent with existing Federal civil rights enforcement policy to require through legislation that the Secretary notify the Governor of a State in writing of noncompliance with Section 106.

In addition, I would like to point out that the bill takes a vigorous approach in Section 105 to protect against misuse of funds made available through H.R. 16141; whereas, in Section 106, a conciliatory approach is adopted in enforcing the nondiscrimination requirement. While I am not going so far as to urge that Section 106 conform to the approach in Section 105, I wish to emphasize that the abuse of racial discrimination in federally assisted programs is far more damaging to society and to the affected minority groups than any conceivable fiscal abuse by State departments of education. The Federal Government always can sue to recover stolen or misappropriated monies, it cannot restore an educationally damaged child to its proper status in society or ever compensate a minority child for denial of his or her constitutional rights.

TITLE II—PRIVATE EDUCATION

Title II of H.R. 16141 provides for a credit against an individual's income tax for tuition paid by the taxpayer to "any private nonprofit elementary or secondary school" for a dependent. The amount of the tax credit is limited to the lesser of either the tuition paid or $200. The bill states that for the purposes of the Title a private nonprofit elementary or secondary school means an educational institution which is described in sections 501(c)(3) and 170(b)(1)(A)(ii) of the Internal Revenue Code of 1954 and which is exempt from tax under section 501(a) of the Code.

The Commission on Civil Rights is concerned with this provision of the "Public and Private Assistance Act of 1972." We have considerable doubt concerning the propriety of such an enormous level of Federal support to private schools—schools which tend to serve rather limited and distinct religious and economic classes of our population—when such support will almost certainly limit the amount of Federal support extended in the future to the public schools. The result may be an erosion of local and State support for public schools to the irreparable damage to the education of all poor and minority group children.

Our immediate concern, however, is that the granting of tax credits for tuition payments to private schools may encourage and support the establishment and maintenance of private segregated academies.

The Commission on Civil Rights first investigated the creation and spread of segregated private schools and their impact on public school desegregation in our 1967 report on *Southern School Desegregation 1966–67*, a copy of which I would like to provide for the Committee's files at this time.

Segregated private schools spread through the South in the 1960's following the beginning of effective implementation of the 1954 *Brown* decision. These so called "private" schools generally received substantial State support. Often the State or local school district sold or donated land, buildings, buses, text books and other school equipment to the private schools. Furthermore, eight of the Southern States adopted schemes of State grants for tuition payments to private schools in a further effort to frustrate the implementation of desegregation. In some States these grants were made to the parents of students choosing to attend the private schools themselves. The discriminatory purpose of these enactments was often quite clear. In some instances the tuition grant legislation was passed in connection with school closing laws or laws repealing compulsory school attendance. In other instances tuition grants were made available to parents who did not wish to send their children to desegregated schools. For example, in

North Carolina funds were made available to every child who was "assigned to a public school attended by a child of another race against the wishes of his parent or guardian."

Our 1967 report contained this specific finding with regard to segregated academies:

"Many private segregated schools attended exclusively by white students have been established in the South in response to public school desegregation. In some districts such schools have drained from the public schools most or all of the white students and many white faculty members. Under the Internal Revenue Code of 1954, institutions organized and operated exclusively for charitable purposes and not for private benefit are exempt from paying income taxes and contributors to these institutions are entitled to deduct contributions, within certain limits, from their taxable income. Some racially segregated private schools have been approved by the Internal Revenue Service for the receipt of these tax benefits, while others have applications for these benefits pending before the Internal Revenue Service."

It is this latter issue—the role of the Federal tax laws and their interpretation and enforcement by the Internal Revenue Service—that is our primary concern.

We are pleased to note that H.R. 16141 by incorporating the Internal Revenue Code's definitions of tax exempt institutions whose tuition charges qualify for tax credits has thereby incorporated the interpretations given those sections by a three-judge Federal court in the cases of *Green* v. *Kennedy* and *Green* v. *Connally*—a development in the law which occurred in part because of the Commission's 1967 report.

Mr. Chairman, the Internal Revenue Code, as interpreted by *Green* v. *Connally*, does not permit tax exempt status or the deduction of charitable contributions to segregated private schools. The court based its holding on its reading of the Code in light of the public policy against racial discrimination in education. It strongly indicated, however, that if it were not able to base its holding on this statutory interpretation it would have been compelled to find that Federal support for private segregated schools through tax benefits was unconstitutional.

As the court stated in its earlier decision:

"The Federal Government is not constitutionally free to frustrate the only constitutionally permissable state policy, of the unitary school system, by providing Government-support for endeavors to continue under private auspicies the kind of racially segregated dual school system that the state formerly supported."

Further, although the specific order is limited to Mississippi, the court clearly indicated the applicability of the principles of its decree to private schools throughout the Nation. The court stated:

"To obviate any possible confusion the court is not to be misunderstood as laying down a special rule for schools located in Mississippi. The underlying principle is broader, and is applicable to schools outside Mississippi with the same or similar badge of doubt. . . .''

The court continued:

"The Service would be within its authority in including similar requirements for all schools of the nation."

Unfortunately, the court's reliance on the good faith efforts of the Internal Revenue Service to implement the decree nationwide has proved to be unjustified. The Commission on Civil Rights has found that in many cases the IRS is not fully carrying out what we believe are its obligations under the *Green* order.

In our publication *The Federal Civil Rights Enforcement Effort: One Year Later* of November 1971 which I will submit for your consideration, the Commission noted that the IRS in a Revenue ruling interprets a racially nondiscriminatory policy for private schools to mean that:

". . . the school admits students of any race to all the rights, privileges, programs, and activities generally accorded or made available to students at that school and that the school does not discriminate on the basis of race in administration of its educational policies, admissions policies, scholarship and loan programs, and athletic and other school-administered programs."

This interpretation by IRS does not encompass nondiscrimination in teacher employment. The *Green* decree required the IRS to collect racial data on the faculty and administrative personnel of private academies in Mississippi. The IRS, however, insisted that this data is only to be used to determine whether the academies discriminate as to students.

The Service further argued that no public policy required it to consider private schools' employment practices since employment practices of educational institutions were excluded from the coverage of Title VII of the Civil Rights Act of 1964. This reason, which was questionable in the first place, now is clearly wrong in view of the recent amendments to Title VII to include educational institutions in the Equal Employment Opportunities Enforcement Act of 1972. Furthermore, the IRS position ignores the fact that the Department of Health, Education, and Welfare for years has prohibited faculty discrimination in public schools under Title VI of the 1964 Civil Rights Act.

Although the Commission believes the *Green* order does not exhaust the enforcement function of the Service, IRS has not required that schools outside Mississippi submit the information the court ordered be obtained from Mississippi schools, "unless there is a reason to doubt the good faith of a school's declaration of a nondiscriminatory policy and an examination is conducted."

The IRS only requires schools outside Mississippi to submit a statement indicating whether the school's admission policies and practices are nondiscriminatory (and, if so, to indicate how this has been publicized), but these statements are not accompanied by specific statistical data.

I am sorry to report that the IRS and the Treasury Department have not improved their enforcement efforts since our 1971 report. In July of this year, Father Hesburgh, Chairman of the Commission, wrote to the Secretary of the Treasury concerning the Internal Revenue Service's enforcement of its policy on discrimination in nonpublic schools. The Secretary responded:

"There has been no change in the IRS policy within the last nine months with regard to its program against racial discrimination in private nonprofit schools.

"The IRS has not altered its decision to exclude teacher employment from its racially nondiscriminatory requirements . . . .

"There has been no decision to expand the type of enforcement program required in the *Green v. Connally* case to states other than Mississippi."

At this point I would like to submit the response of Secretary Shultz to Chairman Hesburgh as well as the complete file of correspondence between the Commission and the IRS and Treasury dating back to 1967. This record is necessary to support our recommendations with respect to Title II of H.R. 16141.

As I indicated earlier the provisions of the Internal Revenue Code which are referred to in Title II of H.R. 16141 do not permit the granting of tax credits for tuition payments to segregated private schools. But in light of the IRS's failure to enforce this prohibition, the Commission feels that specific enforcement provisions must be included in the Title. These provisions should explicitly require the IRS to collect information *in all States*, including a racial breakdown of students attending and applying to the private school the disposition of available scholarship and loan funds, and a racial breakdown of faculty and administrative staff. In addition, the provision should require that each school publicize its racially nondiscriminatory policy.

I would also like to suggest that the field review and other enforcement of these provisions be given to the Department of Health, Education, and Welfare. That Department possesses the expertise and personnel to determine whether a private school actually is segregated or not; the Secretary could certify to the Commissioner of the Internal Revenue Service that he has found a private school to be operating on a segregated basis in violation of the law. Upon receipt of such a certification, the Commissioner would withdraw the tax exempt status of the institution and thereby under the terms of Title II not grant tax credits for tuition payments to such institutions. The adoption of such a procedure, we believe, would relieve the Service of an enforcement burden while at the same time strengthening the overall enforcement effort.

CONCLUSION

In summary, the Commission expresses no view on the equalization payments provided in Title I, other than to note the reservation that Congress might wish to postpone action until the Supreme Court has spoken on the school finance equalization question and established standards in this area. The nondiscrimination enforcement provisions of Section 106 should be made consistent with existing Federal civil rights enforcement policies and laws. Lastly, we feel that in view of the five year record of non-enforcement by the Internal Revenue Service with respect to segregated private schools, the Congress should specifically require evenhanded and effective enforcement of the Code as interpreted by the

Court in the *Green* decisions in all States, not just in Mississippi, and place the responsibility for compliance review in the Department of Health, Education, and Welfare.

THE SECRETARY OF THE TREASURY,
Washington, D.C., August 15, 1972.

REV. THEODORE M. HESBURGH,
Chairman, U.S. Commission on Civil Rights,
Washington, D.C.

DEAR FATHER HESBURGH: This is in response to your letter dated July 3, 1972, in which you ask that we provide you with information on relevant action taken by this agency to enforce its civil rights efforts. Your request is directed specifically to the enforcement of the Internal Revenue Service (IRS) policy on discrimination by nonpublic schools. Under this policy a school that has not established a racially nondiscriminatory policy as to students will not be recognized as exempt from Federal income taxes.

Revenue Ruling 71–447 defines "a racially nondiscriminatory policy as to students" as meaning that "the school admits students of any race to all the rights, privileges, programs and activities generally accorded or made available to students at that school and that the school does not discriminate on the basis of race in administering its educational policies, admissions policies, scholarship and loan programs, and athletic and other school-administered programs." The term "nonpublic schools" as you used it in your letter is construed to mean private nonprofit schools.

Your first question asks for a description of the organizational structure created to enforce the IRS policy on racial nondiscrimination by such schools, indicating the locus and degree of authority and responsibility of each unit.

The organizational structure for administering exempt organizations provisions of the Internal Revenue Code is reflected in the attached chart (Attachment 1). The enforcement of the IRS policy on racial discrimination by private nonprofit schools is handled within the existing organizational structure established for the exempt organizations program. No special organization was set up to handle private nonprofit school cases. The field enforcement program is under the jurisdiction of the Office of the Assistant Commissioner (Compliance) which has an Exempt Organizations Examination Branch within its Audit Division that plans, implements, and evaluates nationwide programs for the examination of exempt organizations' returns and records. This Branch issues procedural material required for the execution of exempt organizations examinations and reviews revenue agent reports for quality and uniformity of exempt organizations examinations.

This Branch maintains close communication and liaison with the Office of the Assistant Commissioner (Technical) on exempt organizations matters. The actual field operations are centralized in 16 key districts identified in the News Release dated January 29, 1970, attached (Attachment 2). Key districts process applications for recognition of exemption, conduct examinations of exempt organizations, and make appropriate recommendations as to the exempt status and the advance assurance of deductibility of contributions.

Within the Office of the Assistant Commissioner (Technical), there is the Exempt Organizations Branch which has jurisdiction over substantive questions relating to the program. This Branch drafts Revenue Procedures and Revenue Rulings relating to exempt organizations matters, processes complex applications for recognition of exemption referred to it from the key districts, reviews recommendations made by the key districts, and furnishes technical advice to those districts relative to specifically identified problem areas or cases.

You then ask for the current number of full-time, professional staff within IRS who devote more than half their time to enforcement of the policy concerning racial discrimination by private nonprofit schools and to provide the total man-hours spent in FY 1972 by the staff implementing this policy.

The IRS does not have a designated full-time, professional staff specifically assigned to the enforcement of this policy. The man-hours expended in such enforcement are set out below.

Field personnel expended 9,384 man-hours and National Office personnel 11,278 man-hours during FY 1972 in conducting surveys of the admissions policy of all private nonprofit schools that held favorable tax exemption rulings in field examinations of certain schools, in processing applications for recognition of exemption and other related work. FY 1972 man-hours broken down by Regions and the National Office are as follows:

Regions:	Man hours
Southwest	998
Midwest	1,123
Central	950
Mid-Atlantic	2,072
North-Atlantic	1,605
Western	729
Southeast	1,907
Total	9,384
National office	11,278
Grand total	20,662

Your next two questions ask for the budget identifying actual and proposed expenditures, for FY 1972, FY 1973, and FY 1974, to enforce the IRS civil rights policies specifically identifying amounts allocated and/or expended for the enforcement of the policy concerning discrimination in private nonprofit schools.

We regret that we are unable to answer these questions since the Internal Revenue Service budget does not provide a specific line item for these purposes.

You then ask for a description of any formal or informal procedure established to insure that (1) Federal tax exemption letters are not issued to or retained by racially or ethnically discriminatory private nonprofit schools and (2) charitable contributions are not claimed for income tax purposes by persons contributing to racially discriminatory private nonprofit schools. You also ask for details on any group rulings concerning compliance with the IRS policy on racial discrimination in private nonprofit schools.

Following the IRS policy announcement on July 10, 1970, guidelines were issued to IRS people for processing applications of private nonprofit schools for recognition of exemption. These instructions apply both to the processing of applications both by the National and District offices and provide that the only private nonprofit school applications on which key districts should issue determination letters recognizing exemption are those in which there is sufficient information to establish clearly that the institution does not and will not discriminate against applicants on the basis of race.

Where a school cannot clearly establish an ongoing bona fide nondiscriminatory policy as to students, it must take affirmative steps to demonstrate its willingness and intention to so operate in the future to qualify for exempt status. In such latter cases a school must:

(a) provide by charter, bylaws, or resolution of the governing body that it will not discriminate against applicants and students on the basis of race; and

(b) publicize, in a manner calculated to make known to all segments of the community it serves, the fact that it does not discriminate on the basis of race.

A showing that the school is actually integrated, i.e., that it does in fact have a meaningful number of students from racial minorities enrolled is evidentiary of a racially nondiscriminatory *admissions* policy. However, a nondiscriminatory admissions policy will not in itself be conclusive that a school has established a nondiscriminatory *policy as to students* as defined above, as the latter requires that the school show also that it offers equal opportunity for admission to all the rights and privileges accorded to all students.

For FY 1972, various directives regarding audit programs and objectives were issued. They provide for the examination of private nonprofit institutions recognized as exempt under Section 501(c)(3) of the Internal Revenue Code, and that these examinations should receive a high priority in planning and execution. Further, telegraphic instructions were issued requiring key distrcts annually to examine a specified number of the total private nonprofit schools as identified in the private nonprofit schools survey whether or not there were any complaints with regard to such schools. These telegraphic instructions also required the immediate identification and assignment for examination of at least 10 schools in each key district. The private nonprofit schools examined as a result of these instructions are referred to in the answer to your question number 8.

With regard to your question concerning charitable contributions claimed for income tax purposes, IRS procedures are fully covered in Revenue Procedure 68–17, a copy of which is provided (Attachment 3). Under this procedure advance assurance of deductibility of contributions to a school may be suspended if available facts and evidence clearly raised serious doubts concerning the continued qualifications of the school as an exempt entity and in the opinion of the District Director there should be public notice of this uncertainty to potential contributors.

With regard to group rulings, questionnaires were mailed to all churches and other religious organizations recognized as exempt from Federal income tax by group rulings that might include as subordinate units private nonprofit schools within the scope of such rulings. A copy of the questionnaire is attached (Attachment 4). Inasmuch as the responses are currently being evaluated, we are unable to furnish details at this time. However, where it is clearly shown that a subordinate private nonprofit school conforms to the IRS policy of racial nondiscrimination, affirmations of the exemption ruling are issued. In instances of nonconformance with the announced policy, action will be taken to seek voluntary compliance. In the absence of such compliance, the IRS will take the appropriate steps based upon all the facts and circumstances of a given case to remove the school from the umbrella of exemption afforded by the parent's ruling letter.

Your sixth question asks for a list of all private nonprofit schools against which written complaints of discrimination have been made since October 1971. It also asks for copies of three complaint investigations, two of which were conducted in the Southeast. It further asks for a listing of any changes in the disposition of the complaints listed in Appendix VI of the letter dated October 19, 1971, from Charles E. Walker, Acting Secretary of the Treasury, to John A. Buggs, Acting Staff Director, U.S. Commission on Civil Rights.

A list of private nonprofit schools concerning which written complaints of discrimination have been made since October 1971 is attached (Attachment 5). Three complaints were received which initiated examinations. Of these three examinations, two were conducted and completed by the Southeast Region. "No Change Reports" are attached (Attachment 6). The other complaint was received in the Midwest Region and is presently under investigation. Thus, we are unable to provide the third report at this time.

The changes in the disposition of the complaints furnished in the aforementioned Appendix VI are set forth by list (Attachment 7).

Your next question asks for a list of all private nonprofit schools for which information has been received which indicates a possible violation of the IRS civil rights policy, but not included in the list requested in question 6. This information is also furnished in an attached list (Attachment 8).

As a result of our instructions requiring the examination of at least ten schools in each key district (referred to in answer to question number 5), a total of 205 schools were examined. A list of the schools examined and copies of three reviews conducted in FY 1972, two in the Southwest and one in North-Atlantic, are attached (Attachment 9).

Your ninth question asks for a list of all civil actions to which IRS is a party regarding tax exemptions to private nonprofit schools and their status.

An attached list contains civil cases which deal specifically with the civil rights issue of racial nondiscrimination as it pertains to private nonprofit schools. The Office of the Chief Counsel of the Internal Revenue Service has provided this information as shown on the list entitled "Cases in the General Litigation Division Involving School Segregation" (Attachment 10).

Your next question relates to schools having received recognition of exempt status by reason of a group ruling. You ask (a) That we provide copies of evaluations by IRS of questionnaires regarding admission policies submitted by schools which have been the subject of litigation to revoke their exempt status; (b) To what degree has IRS coordinated these evaluations with the Office of Civil Rights (OCR) of the Department of Health, Education and Welfare? (c) Has IRS used the compliance review reports and other information on church schools which is available to OCR? (d) To what degree is a national organization which secures a group ruling obligated to inform IRS of charges of alleged discrimination against schools covered by the ruling? (e) That we indicate schools for which District Directors have issued "public notice of uncertainty" to potential contributors as provided for in Revenue Ruling 68-17, to the private nonprofit schools which are the subject of civil suits or Title VI complaints.

Please see the reply to your fifth question. Inasmuch as there has been no action initiated by the IRS to revoke the recognition of exemption of a particular school coming within the scope of a group ruling to a central organization, such as a church or other religious organization, based on the survey questionnaires, we are unable to furnish copies of evaluations. There has however been some litigation initiated by parents of black students who were refused admission to certain parochial schools in Louisiana. (See *David Greenhouse* v. *Connally* listed in Attachment 10.)

Although the IRS has relied on its existing published policy and internal instructions for its implementation of this program, it is not averse to seeking assistance or additional information from other Federal sources should the need arise.

Insofar as your question related to periodic reporting to the IRS by central or parent organizations, our procedures require a central organization to furnish, within 45 days after its annual accounting period closes, updated information about its subordinates, including a statement describing any changes during the year in the purposes, character, or method of operation of the subordinates. Moreover, the central organization may be asked by the IRS to furnish any additional information that is deemed pertinent to the continued recognition of exemption of it or any of its subordinate units that come within the scope of the group ruling. Failure to furnish the additional information and to comply with the IRS requirements could be the basis of a proposed adverse action to revoke recognition of exemption.

If the District Director is put on notice or receives information which raises serious doubt about the continued qualification of the organization to receive contributions which are deductible by donors, he is required by Revenue Procedure 68-17 referred to above to immediately evaluate the effect of such information. If the information raises doubts as to the right of the organization to continued reliance on the exemption ruling the District Director proposes immediate suspension of advance assurance of the deductibility of contributions even before completion of an examination of the organization's activities. The organization is notified of the proposed action in accordance with the provisions of the Revenue Procedure and afforded the opportunity to comply with the IRS policy. Failure of the organization to comply necessitates a request for technical advice to the National Office in the matter. If the National Office concurs, the organization is officially notified of the suspension of advance of deductibility of contributions and, simultaneously, the IRS issues a news release which later appears as an announcement in the Internal Revenue Bulletin.

The IRS did not suspend advance assurance of deductibility of contributions to any subordinate private nonprofit school coming within the scope of a group ruling during FY 1972. However, the IRS took such action during FY 1972 against 53 private nonprofit schools that were recognized as exempt under individual rulings. Moreover, during the same FY, the National Office of the IRS concurred in the field offices' proposed revocations of 26 private nonprofit schools which were previously recognized as exempt under individual rulings.

You then ask whether the IRS has changed any of its policies in the last nine months with regard to the enforcement of its program against racial discrimination in private nonprofit schools. As an example, you ask whether IRS has altered its decision not to extend its nondiscrimination requirement to teacher employment and whether it has decided that the type of enforcement program required in the *Green* v. *Connally* case will be expanded to states other than Mississippi.

There has been no change in the IRS policy within the last nine months with regard to its program against racial discrimination in private nonprofit schools.

The IRS has not altered its decision to exclude teacher employment from its racially nondiscriminatory requirements. The rationale for our decision was set forth in the letter dated October 19, 1971, of Charles E. Walker, Acting Secretary of the Treasury, to John A. Buggs, Acting Staff Director, U.S. Commission on Civil Rights.

There has been no decision to expand the type of enforcement program required in the *Green* v. *Connally* case to states other than Mississippi.

You further ask what specific factors are taken into account in determining the "good faith" of a school's declaration of a racially nondiscriminatory policy.

The specific factors taken into account in determining the "good faith" of a school's declaration of a nondiscriminatory policy are: (a) a bona fide nondiscriminatory admissions policy; (b) publication of its nondiscriminatory admissions policy in a matter calculated to make it known to all segments of the community that it serves; (c) minority representation on the faculty and administrative staff; and (d) a showing that the school does not discriminate in the administration of its educational policies, scholarship and loan programs, and athletic and other school administered programs.

Your last question asks what steps have been taken to determine the extent of exclusion of national origin minority children, e.g., Mexican Americans or Puerto Ricans, from private nonprofit schools and what actions have been taken to deal with this situation.

The survey of tax exempt status of private educational institutions commenced by the Service on November 30, 1970, included all private nonprofit educational institutions for which there was a record of an individual ruling of recognition of exemption. In subsequent instructions it was noted that although reference was made to "minority race" students it should be recognized that racial discrimination against any race would disqualify the organization.

We hope you will find the foregoing information helpful and responsive.

Sincerely yours,

GEORGE P. SHULTZ.

Enclosures—10

UNITED STATES COMMISSION ON CIVIL RIGHTS,
Washington, D.C., September 17, 1971.

Hon. JOHN B. CONNALLY,
Secretary of the Treasury,
Washington, D.C.

DEAR MR. SECRETARY: This letter is to express the Commission's concern regarding the apparent lack of action by the Internal Revenue Service (IRS) after the District Court for the District of Columbia rendered its decision in *Green* v. *Connally*, Civil Action No. 1355-69 (D.D.C., June 30, 1971) and to request information with regard to IRS' fulfillment of its civil rights obligation.

Based on an October 14, 1970, IRS affidavit which assured the court that it would undertake a compliance program, the court did not include in the order the specific mechanisms for an enforcement program. We are interested in determining what action IRS has taken and will take to implement the court's order.

The Internal Revenue Code, as interpreted by *Green* v. *Connally*, does not permit tax exempt status or the deduction of charitable contributions to segregated private schools. (See, for example, *Green* at p. 20.) Furthermore, although the specific order is limited to Mississippi, the court clearly enunciated the applicability of the principles of its decree to private schools throughout the Nation. The court states:

> To obviate any possible confusion the court is not to be misunderstood as laying down a special rule for schools located in Mississippi. The underlying principle is broader, and is applicable to schools outside Mississippi with the same or similar badge of doubt. . . . (*Green*, at p. 40)
>
> * * * * * * *
>
> The service would be within its authority in including similar requirements for all schools of the nation. (*Green*, at p. 44.)

The Commission believes that IRS must apply the *Green* mandate to private schools nationwide if it is to act with the good faith upon which the court relied (*Green* at pp. 45-46).

You will recall that in October, 1970, the Commission issued a report entitled, "The Federal Civil Rights Enforcement Effort", which evaluated the performance of a large number of Federal departments and agencies having civil rights responsibilities. In May, 1971, we released a followup report which commented on the response of the departments and agencies to the October, 1970 report.

In November of this year, the Commission again plans to report to the President, the Congress, and the Nation on the progress agencies have made in strengthening their civil rights enforcement effort. In order that the Commission may be in a position to assess as fairly as possible the progress made by IRS, we are asking you to provide us with updated information on the relevant actions it has taken in this area. We have enclosed a list of questions that relate to the civil rights performance of IRS and would appreciate as complete a response to them as is possible.

To assure that your response is fully considered in the Commission's evaluation, we would appreciate receiving your reply no later than October 6. Answers to any questions that may arise in connection with the questionnaire may be obtained by calling Mr. Jeffrey M. Miller, Chief, Federal Evaluation Division, telephone (202) 254-6655.

Thank you in advance for your consideration.

Sincerely,

JOHN A. BUGGS,
Acting Staff Director.

Enclosure

INTERNAL REVENUE SERVICE

1. Has the mandate of *Green v. Connally* been applied to private academies throughout the Nation? If so, what procedures have been established to ensure compliance with the spirit and the letter of that decree? If you do not envision so applying *Green v. Connally*, please indicate what the extent of application will be.

2. What mechanisms have been developed to ensure compliance with the court's order with regard to Mississippi? Specifically:

(a) What must a private academy do to satisfy the requirement "that it has adopted and publicized a racially nondiscriminatory policy as to students and specifically that it does not not discriminate on the basis of race in administration of educational policies, applications for admission, and in regard to scholarship and loan programs, and athletic and extra-curricular programs." (*Green*, at p. 44.)

(b) Has IRS gathered the statistical data required by *Green?* (*Green*, at p. 45.) If so, please provide copies of compliance report forms as well as copies of whatever responses IRS has received to date.

(c) What criteria has IRS established for the evaluation of these responses? Please provide copies of appropriate memoranda.

(d) What additional informational requirements has IRS imposed (or will it impose) on private academies which will assist IRS in its enforcement effort. (See e.g., *Green*, at p. 45, which states that the court's order does "not exhaust the enforcement function of the Service.")

(e) How many private schools has IRS found to be in compliance and noncompliance, respectively, with IRS' established criteria? Please provide the names of the schools in both categories and the basis for your findings.

(f) How many private academies are awaiting IRS determinations, as to that tax exempt status?

3. In Acting Secretary Paul A. Volcker's letter of April 12, 1971, to Father Theodore Hesburgh, Chairman of the Civil Rights Commission, he indicated that a significant number of examinations to determine the appropriateness of continued tax exempt status will be directed to private schools. With respect to the question of racial discrimination, have any written guidelines been developed for conducting these examinations? If so, please provide copies of these guidelines.

4. Acting Secretary Volcker's April letter also indicated that questionnaires had been mailed to all schools with tax exempt status. Please provide a copy of this questionnaire. Has the Service completed the processing of the responses to these questionnaires? If so, provide the results, vis, a listing of the schools (name and location) that were found to be in compliance and a listing of those found to be out of compliance, based on an analysis of the questionnaire responses.

5. The letter further stated that "[w]here necessary, field examinations will be made prior to the affirmation of the exemption letter." How will the necessity to conduct such an examination be determined (i.e., what criteria will be applied)? Have any guidelines been developed for conducting the examinations? If so, provide copies of any reduced to writing. Have any such examinations been conducted? If so, what have been the findings in each case (identify the name and location of the schools subject to such an examination)?

6. The letter stated that complaints of racial discrimination had been held in suspense until the process of evaluating the above questionnaires was completed. Have these complaints been investigated to date? If so, list each private school (name and location) against which a complaint was filed and indicate the disposition of each complaint.

7. Finally, the letter indicated that the term racial discrimination does not contemplate teacher employment; however, we note in the court's order (*Green*, at p. 45) that a racial breakdown of faculty and administrative staff is required. In light of this order, does IRS intend to redefine "racial discrimination"

to encompass discrimination against faculty and administrative staff (including applicants)? If so, please describe what steps have been taken to do this. If not, please explain the rationale of IRS' determination.

8. Parochial schools, which comprise the vast majority of nonpublic schools, were established when segregation was required by law in many states.

(a) How has IRS verified the elimination of the dual school system formerly required by law with respect to such schools?

(b) What procedures have been adopted to enforce the *Green* order and IRS regulations in relation to such schools?

(c) Is IRS relying on any representation by national church organizations that such schools do not discriminate? If so, identify the organization(s) and furnish copies of any assurances provided by such organizations.

(d) How specifically has IRS verified such representations?

9. Does IRS have any procedures for deferring automatic deductions for contributions to private schools where rulings on the schools' tax exempt status in terms of "open admissions policy" are pending? If so, describe this procedure. If not, please explain the reasons for not establishing such a procedure.

U.S. COMMISSION ON CIVIL RIGHTS—STATEMENT OF THE COMMISSIONERS ON TAX-EXEMPT STATUS OF SEGREGATED PRIVATE SCHOOLS, JAN. 29, 1970

Efforts to achieve meaningful school desegregation in the South are being threatened by an increase in the number of private segregated schools. For a number of years, the Commission has called attention to the fact that private segregated schools are able to function, largely because of the tax benefits accorded by the Internal Revenue Service. Their profits are exempt from taxation and contributions are deductible. We urge the Internal Revenue Service to withdraw these tax benefits from such schools.

Since August 1967, the Commission has written six letters to the Treasury Department and the Internal Revenue Service urging them, as we do now, to deny these schools tax exemptions. For over two and one-half years we have received no substantive reply to our letters. Our most recent response was a letter of December 3, 1969 from the General Counsel of the Treasury Department which informed us that the matter was in litigation and that a further reply would be forthcoming. We are aware of the litigation to which the General Counsel refers, but cannot see why it prevents the Internal Revenue Service from changing its policy.

We have repeatedly stressed the illegality of the Internal Revenue Service grant of Federal tax benefits to these schools. The charitable deduction provisions of the Internal Revenue Code require that the institutions to which deductible contributions may be made must promote the general public welfare. No longer can racially segregated private schools be seen as anything but contrary to the public interest. The granting of tax benefits so significantly involves the Federal Government in private school segregation that this involvement renders their segregated operation in derogation of constitutional rights.

Although public school desegregation in the South will continue, the establishment of private segregated schools is threatening to weaken, if not destroy, support for public education. The segregated private school is the last resort of school segregationists. It is unacceptable that the policies of the Treasury Department on the tax-exempt status of private segregated schools shelter and foster the proliferation of this last bastion of segregation to the detriment of public education.

The Southern Regional Council, a research and information agency, estimates that 300,000 white children attended "segregated academies" in the fall of 1969. Because of recent court rulings ordering immediate school desegregation, the Council estimates the number has now increased to at least 400,000. We have learned that in Mississippi alone, during this school year, the number of segregated private schools has almost doubled.

This matter is of such serious proportions that on January 6, 1970, Robert H. Finch, the Secretary of the Department of Health, Education, and Welfare, expressed his concern over the effects of tax policies which promote the spread of segregated private schools. He called upon the Secretary of the Treasury to eliminate these benefits.

This issue also is before the courts. On January 13, 1970, a three judge District Court for the District of Columbia in *Green v. Kennedy* preliminarily enjoined the Treasury Department and the Internal Revenue Service from granting tax benefits to private schools in Mississippi until the agencies first determine whether the schools are segregated. The Court found "that the tax benefits under the Internal Revenue Code mean a substantial and significant support by the Government to the segregated school pattern." Noting that the tax policy of the Federal Government was at odds with school desegregation principles, the Court said: "The Federal Government is not constitutionally free to frustrate the only constitutionally permissible state policy, of a unitary school system, by providing government support for endeavors to continue under private auspices the kind of racially segregated dual school system that the state formerly supported." The Court directed that before a private school was found eligible to receive tax benefits, the Treasury Department, and the Internal Revenue Service must determine, according to Court approved procedures, that the applicant school is not a part of a system of private schools operated on a racially segregated basis as an alternative to white students seeking to avoid desegregated public schools.

It is clear that tax benefits lend direct support to the establishment and maintenance of segregated private schools, while defeating constitutionally required, legislatively mandated and court ordered public school desegregation. We, therefore, urge the Treasury Department and the Internal Revenue Service, on their own initiative, to implement the Court's decision in *Green v. Kennedy* in other states as well as in Mississippi. Further, we ask these agencies to follow the guidelines set down in *Green* when reviewing existing determinations as well as pending and future applications.

U.S. COMMISSION ON CIVIL RIGHTS,
Washington, D.C., July 24, 1970.

Hon. RANDOLPH W. THROWER,
Commissioner, Internal Revenue Service,
Washington, D.C.

DEAR MR. THROWER: This letter concerns the recent determination of the Internal Revenue Service to deny tax exempt status to private schools which practice discrimination based on race. We wish to commend you for reversing a long standing Internal Revenue Service policy. As you are aware, the Commission on a number of occasions has stated its opinion that tax exempt status for racially discriminatory private schools is illegal and has recommended that such status be denied by the Internal Revenue Service.

In the Commission's view, and we believe you will agree, a statement of government policy alone, without a vigorous implementation of that policy by the responsible government agency, will not eliminate discriminatory practices.

In announcing the new policy, you are quoted as saying: "[I]n most instances evidence of a nondiscriminatory policy can be supplied by reference to published statements of policy or to the racial constituency of the student body." You added that IRS will assume that the applicant's statements are "in good faith" and will later verify them.

Apparently IRS will accept public statements, such as a clause in the school's charter or an advertisement in a newspaper, as evidence of a nondiscriminatory policy sufficient to justify the grant of tax benefits. In the Commission's long experience in observing the developments in school desegregation, we have found that expressions of good faith unaccompanied by positive actions are unproductive. Whether a school is racially nondiscriminatory can only be measured by the racial composition of its faculty and student body and not by assertions of nondiscrimination.

We believe IRS should initiate enforcement procedures to require private schools to comply with its new policy if they wish to maintain their tax benefits and obtain the grant of benefits in the future. The Internal Revenue Service should grant tax exemptions only when schools establish their nonsegregationist policy by affirmatively hiring faculty and admitting students on a racially nondiscriminatory basis. These schools should be required to admit substantial numbers of minority group children or show why it is impossible to do so. The inability of minority students to meet the cost of enrollment should not be an acceptable basis for the failure to achieve a desegregated student body; the schools can overcome this problem through liberal scholarship programs.

We noted with interest the article in the New York Times on Sunday, July 19, 1970, reporting that IRS on July 18 "had granted income tax exemptions to six southern private schools that had promised not to discriminate on the basis of race." We hope that the continued grant of tax benefits will be made in accordance with specific requirements for private school compliance as suggested above.

Finally, we are aware that many problems will arise with the implementation of compliance procedures. We are certain, however, that IRS can obtain guidance from the Department of Health, Education, and Welfare, which has had extensive experience in school desegregation problems.

The Commission urges the Treasury Department and the Internal Revenue Service immediately to implement procedures which will either bring about desegregation of racially segregated academies or will result in the revocation of their tax benefits. In calling for strong implementation, we wish to emphasize the significance of the new Internal Revenue Service policy and to commend IRS for its public position. We are pleased that the Internal Revenue Service stated that granting tax benefits to segregated academies is a violation of the law, and that it is willing to back up this belief by revoking tax benefits from those schools which refuse to desegregate.

Sincerely,

Howard A. Glickstein,
Staff Director.

U.S. Commission on Civil Rights,
Washington, D.C., January 7, 1972.

Hon. Robert H. Finch,
Secretary, Department of Health, Education and Welfare,
Washington, D.C.

Dear Mr. Secretary: I wish to offer my personal commendation and appreciation for your statement of Tuesday asking the Internal Revenue Service to reverse its ruling granting tax exempt status to private segregated schools.

For a number of years, the Commission on Civil Rights has called attention to the fact that one reason private segregated schools are able to function is because they are accorded tax exempt status and contributions to the school result in the contributor receiving a tax deduction. We have urged the Internal Revenue Service to withdraw tax exemption from such schools.

Our most recent effort to secure action from the Treasury Department is evidenced by the enclosed letter and accompanying enclosures which we sent to the Secretary of the Treasury in November. We have yet to receive a substantive response in two-and-a-half years of correspondence on this subject. Eventually, I am convinced, the Treasury Department will be forced to reverse its policy and the sooner it does so the better. The chief effect of delay, as the New York Times noted Tuesday, "would be to prolong the agony and the bitterness and delay the advent of reason."

I would like to assure you of the support of the Commission on this matter and if the Commission can be of any assistance to you, please contact my office.

Sincerely yours,

Howard A. Glickstein.

Enclosures.

The General Counsel of the Treasury,
Washington, D.C., December 3, 1969.

Honorable Theodore M. Hesburgh,
Chairman., U.S. Commission on Civil Rights
1405 Eye Street, N.W., Washington, D.C. 20425

Dear Mr. Hesburgh: On behalf of the Secretary, I wish to acknowledge your letter of November 26, 1969.

As you know, the issue which you raise is currently in litigation. Nevertheless, I shall check into the facts and you will have a further reply.

Sincerely yours,

Paul W. Eggers.

U.S. Commission on Civil Rights,
Washington, D.C., November 26, 1969.

Hon. David M. Kennedy,
Secretary of the Treasury,
Washington, D.C.

Dear Mr. Secretary: This letter is to express the deep concern of the United States Commission on Civil Rights with respect to the Internal Revenue Service's continuing policy of granting tax exempt status to segregated private schools.

In July 1967, after an extensive study of Southern school desegregation for the 1966-67 school year, the Commission published a report (copy enclosed)

Southern School Desegregation 1966-67. This report contained a finding on segregated private schools in the South. Specially, the Commission found:

Many private segregated schools attended exclusively by white students have been established in the South in response to public school desegregation. In some districts such schools have drained from the public schools most or all of the white students and many white faculty members. Under the Internal Revenue Code of 1954, institutions organized and operated exclusively for charitable purposes and not for private benefit are exempt from paying income taxes and contributors to these institutions are entitled to deduct contributions, within certain limits, from their taxable income. Some racially segregated private school have been approved by the Internal Revenue Service for the receipt of these tax benefits, while others have applications for these benefits pending before the Internal Revenue Service.

Based on this finding, the Commission recommended:

The Secretary of the Treasury should request an opinion of the Attorney General as to whether Title VI of the Civil Rights Act of 1964 or the Internal Revenue Code authorizes or requires the Internal Revenue Service to withhold tax benefits presently being afforded by the Service to racially segregated private schools, or whether congressional action is necessary to assure that such benefits are withheld.

The Attorney General should consider whether, because of such benefits, the Federal Government is so significantly involved in private school segregation as to justify legal action to enjoin the continued operation on a discriminatory basis of schools receiving such benefits. If the Attorney General determines that present legal authority is inadequate either to withhold tax benefits or to permit the institution of litigation, he should recommend appropriate legislation to the President.

Appendix VIII to this report contained a staff paper setting forth the legal arguments against IRS continuing to grant these schools Federal tax benefits. The charitable deductions provisions of the Internal Revenue Code require that the institutions to which deductible contributions may be made must promote the general public welfare. On the basis of staff reports detailing the argument that racially segregated private schools are contrary to the public interest, and that the racial classification they entail promotes more harm than good, the Commission has repeatedly urged the Treasury Department and IRS to cease granting tax exempt status to private segregated schools.

On August 2, 1967, IRS approved the applications for tax benefits of the 42 segregated private schools whose status had been under review. It ruled that tax exemptions will be denied and deductions not allowed "if the operation of the school is on a segregated basis and its involvement with the State or political subdivision is such as to make the operation unconstitutional or a violation of the laws of the United States." In explaining the ruling the Service indicated that segregated private schools would be entitled to Federal tax benefits if: (1) the schools themselves, as opposed to the pupils, do not receive direct financial aid from any governmental unit, and (2) any tuition assistance given to the pupils from governmental sources does not constitute more than 50% of the total financial support of the schools. In effect any segregated private school could thus benefit financially from Federal tax policies so long as the State money is received through State tuition grants to the students—which in most cases had been enacted for the purpose of frustrating public school desegregation—was less than half of the school's financial support.

The Internal Revenue Service's ruling was contrary to the position of the Department of Justice. Court decisions since that ruling, moreover, suggest that the Service's position no longer is tenable.

As a result of increased desegregation of public schools in 11 Southern States, private segregated academies have proliferated. The Southern Regional Council, a research and information agency, estimates that there are ten times as many "segregation academies" now than there were five years ago. The Council estimates that there are roughly 300,000 white children now attending private segregated schools in the South. This proliferation could not have taken place without the substantial stimulus of the tax exemption benefits accorded such private segregated schools by the Internal Revenue Service.

It is ironic that the Federal Government, through the interpretation and operation of its tax laws, has frustrated public school desegregation as mandated by the Constitution and by Federal law. In many areas private segregated schools were started with the aid of unconstitutional State tuition grants and are being maintained today by tax deductible contributions. The result is that in many communities the public school system is being disrupted.

The Commission is concerned that the growth of "segregation academies" will accelerate because of the very recent Supreme Court ruling in *Alexander* v. *Holmes County Board of Education*. The Court ordered in that case:

". . . that each of the school districts here involved may no longer operate a dual school system based on race or color and . . . that they begin immediately to operate as unitary school systems within which no person is to be effectively excluded from any school because of race or color."

In an immediate response to this decision, Governor of Alabama Albert Brewer is quoted as saying, "More private schools could spring up in the State with the advent of a harder push for integration by the government." In view of the real possibility that the "segregation academy" will be used as a device to circumvent this historic decision, I strongly urge you to require the Internal Revenue Service to change its policy of granting tax exemptions to private segregated schools. The Commission has recommended such a reconsideration to the Department of the Treasury and the Internal Revenue Service in previous correspondence enclosed.

I would appreciate an early response to our recommendation for a reappraisal and change in the policy of the Internal Revenue Service.

Sincerely yours,

(Signed) THEODORE M. HESBURGH,
Chairman

Enclosures.

U.S. COMMISSION ON CIVIL RIGHTS,
Washington, D.C., December 16, 1968.

Hon. HENRY H. FOWLER,
Secretary of the Treasury,
Washington, D.C.

DEAR MR. SECRETARY: Thank you for your letter of December 11 to Chairman Hannah.

We look forward to receiving a substantive reply from your agency in the near future concerning the tax-exempt status of racially segregated private schools.

Sincerely yours,

(Signed) SAMUEL J. SIMMONS, *Acting.*

THE SECRETARY OF THE TREASURY,
Washington.

Hon. JOHN A. HANNAH,
Chairman, U.S. Commission on Civil Rights,
Washington, D.C.

DEAR MR. HANNAH: This will acknowledge your recent letter with regard to the tax-exempt status of racially segregated private schools. You refer to letters written to me on this subject on August 4, 1967 and July 18, 1968 by your former Staff Director William L. Taylor and point out that neither of those letters has been acknowledged. You also refer to another later letter from Mr. Taylor to the Commissioner of Internal Revenue to which no substantive reply has been received.

I appreciate your concern about the fact that your letters to me have not been acknowledged and I apologize for this omission. The unfortunate fact is that my office has no record of ever having received the letter of August 4, 1967. The letter of July 18, 1968 was received and my staff has been giving the problem substantially continuous consideration since that time. I neglected to acknowledge the letter because I thought my staff had done so.

I want to assure you of my deep interest in this general subject. Although no final decisions have yet been reached, we hope to be able to furnish a substantive reply to all the Commission's interrelated inquiries in the near future.

Sincerely yours,

HENRY H. FOWLER.

U.S. Commission on Civil Rights,
Washington, D.C., November 7, 1968.

Hon. Henry H. Fowler,
Secretary of the Treasury,
Washington, D.C.

Dear Mr. Secretary: On August 4, 1967, William L. Taylor, then Staff Director of the Commission, sent you a copy of the Commission's Southern School Desegregation, 1966–67, Report to be released that week. In his letter he called your attention to Recommendation No. 10 that the Secretary of the Treasury should request an opinion of the Attorney General as to whether Title VI of the Civil Rights Act of 1964 or the Internal Revenue Code authorizes or requires the Internal Revenue Service to withhold tax benefits presently being afforded by the Service to racially segregated private schools, or whether Congressional action is necessary to assure that such benefits are withheld. Mr. Taylor in his letter solicited your comments or reactions to the report, but our records do not indicate that any response was received.

On July 18, 1968, Mr. Taylor wrote to you a second letter inquiring about the present status of the policy of the Internal Revenue Service granting tax exempt status to segregated private schools. In this letter he also inquired whether you had sought an opinion of the Attorney General on the legality of this policy as recommended by the Commission in its 1967 Southern School Desegregation Report. The Commission has not yet received an acknowledgment of the receipt of this letter nor an answer to our inquiries.

In addition, Mr. Taylor on July 30, 1968, sent a letter to Commissioner Sheldon S. Cohen of the Internal Revenue Service expressing his concern about the approval of Federal tax benefits to the Nansemond-Suffolk Academy, a segregated private school in Suffolk, Virginia, and raised the possibility that a neighboring school might seek and be granted the same benefits. In this letter he indicated his view that the operation of this school is unconstitutional under a series of court decisions interpreting the Fifth and Fourteenth Amendments and recommended a reconsideration of the decision and current policy, especially in light of recent legal developments. Although the receipt of that letter was acknowledged and Mr. Taylor was informed that Commissioner Cohen would reply "as soon as possible," no reply has been received.

I am greatly concerned that the Commission has not received the courtesy of a full response to its recommendations and correspondence. As Mr. Taylor pointed out in his letter to you, these segregated private schools continue to flourish in some areas and have a detrimental effect upon public school education. As a result of the Supreme Court's May decision in *Green* v. *County School Board of New Kent County, Virginia*, outlawing freedom of choice desegregation plans where they are ineffective, the number of segregated private schools in the South can be expected to grow.

May we please have your response on whether the Commission's recommendation was followed either in the manner recommended or in some alternative manner, and whether current legal developments have led to a reappraisal and change in the policy of the Internal Revenue Service?

Sincerely yours,

John A. Hannah, *Chairman.*

U.S. Commission on Civil Rights,
Washington, D.C., October 29, 1968.

Hon. Sheldon S. Cohen,
Commissioner, Internal Revenue Service,
Washington, D.C.

Dear Mr. Cohen: I am enclosing a copy of a recent report by the Virginia State Advisory Committee to the United States Commission on Civil Rights in which that Committee recommends that "[t]he Internal Revenue Service should grant no tax exempt status or other tax benefits to private, segregated schools." The recommendation of the Committee was based in part, on meetings held to investigate the schools of Nansemond County and Isle of Wight County.

In a letter to you dated July 30, 1968, then Staff Director William L. Taylor expressed his concern about the approval of tax exempt status and tax deductibility of contributions to the Nansemond-Suffolk Academy, a segregated private school in Suffolk, Virginia. Mr. Taylor also raised the possibility that similar status would be granted to the private Isle of Wight Academy. Mr. Taylor forwarded to you copies of our correspondence with Secretary Fowler that grew out of the Commission's recent report on Southern School Desegregation.

On August 8, 1968, Mr. Taylor's letter to you was acknowledged by A. S. O'Connell, Chief, Technical Services Branch. That letter stated that we would hear further from you "as soon as possible." No reply has been received. Nor has the Treasury Department seen fit to respond to the recommendations made by the Commission in its report issued in July 1967.

I am greatly concerned that the Commission has not received the courtesy of a full response to its recommendations and correspondence.

I know that the Commission is vitally interested in this issue for it is greatly disturbed by the support Federal policy is giving to the growth of private, segregated schools in the South. The Commission is meeting on November 7, 1968, and I shall review this situation with them.

Sincerely yours,

(Signed) HOWARD A. GLICKENSTEIN,
Acting Staff Director.

Enclosures.

INTERNAL REVENUE SERVICE,
August 8, 1968.

MR. WILLIAM L. TAYLOR,
Staff Director, U.S. Commission on Civil Rights,
Washington, D.C.

DEAR MR. TAYLOR: Commissioner Cohen asked me to thank you for your July 30 letter, and enclosures, concerning the right to a tax exempt status of certain private schools.

He will write to you further in the matter as soon as possible.

Sincerely yours,

A. S. O'CONNELL,
Chief, Technical Services Branch.

U.S. COMMISSION ON CIVIL RIGHTS,
Washington, D.C., July 30, 1968.

HON. SHELDON S. COHEN,
Commissioner, Internal Revenue Service,
Washington, D.C.

DEAR MR. COHEN: I have learned that on last Tuesday, July 23, the Internal Revenue Service approved for tax exempt status and tax deductibility of contributions the Nansemond-Suffolk Academy, a segregated private school in Suffolk, Virginia. There is also a possibility that a similar segregated private school, the Isle of Wight Academy, may submit a similar application. Information of the operations and financing of the private academies in Nansemond and Isle of Wight Counties has recently been gathered by the Virginia State Advisory Committee and staff of the U.S. Commission on Civil Rights. The Chairman of the State Advisory Committee has asked that I forward the information that it has obtained to you.

The Nansemond-Suffolk Academy, according to information obtained from the records of the county board of education, serves grades 1 through 12 while the Isle of Wight Academy serves only grades 1 through 8. Both institutions are segregated, all-white private schools established after the initial desegregation of the public schools in these counties for the purpose of avoiding public school desegregation mandated by Federal law. Students attending the Nansemond-Suffolk Academy received through State tuition grants and paid over to the school $76,177.75 during the 1967–68 school year. This amounts to approximately 46% of the school's income. This school is accredited by the State and adhere to various State regulations on curriculum and State-adopted textbooks. School officials consult frequently with public school officials on their mutual operations. The buses used by the private school were sold to it by the public school system. In addition, under the State's tuition grant statute, teachers in the private school are eligible to participate in the State teacher retirement fund, and the school itself qualifies for State tax benefits as a charity under Virginia law.

The Isle of Wight Academy, located in Isle of Wight, is housed in a former public school building which was declared surplus property by the public school system in June, 1966, and immediately sold for a reported $10,000 to a group of local citizens who established the private school. All of the Academy's teachers came from the public school system. Its buses were once owned by the public school system. The Assistant Superintendent of the Isle of Wight public schools told a staff investigator that when he purchased textbooks and other materials for the public school system, he also purchased a sufficient quantity for the private academy and then sold the books over the counter to private school officials. It is our understanding that this school too receives a substantial amount of State money through tuition grants and is accredited and regulated by State standards.

These elements of State involvement make the operations of the Nansemond-Suffolk Academy and the Isle of Wight Academy unconstitutional according to the decisions in *Evans v. Newton*, 382 U.S. 296 (1966); *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961); *Cooper v. Aaron*, 358 U.S. 1 (1958); *Commonwealth of Pennsylvania v. Brown*, 392 F.2d 120 (3rd Cir. 1968), affirming 270 F. Supp. 782 (E.D. Pa. 1967); *Simkins v. Moses H. Cone Mem. Hosp.*, 323 F.2d 959 (4th Cir. 1963), cert. denied, 376 U.S. 938 (1964); *Poindexter v. Louisiana Financial Assistance Commission*, 275 F. Supp. 833 (E. D. La. 1967), aff'd per curiam, 389 U.S. 571 (1968), and *Lee v. Macon County Board of Education*, 267 F. Supp. 458, 475–78, (M.D. Ala. 1967), aff'd per curiam, 389 U.S. 215 (1968). With regard to the tuition grants being less than 50% of the support of the school, whatever force the "preponderance test" announced in *Griffin v. State Board of Education*, 239 F. Supp. 560 (E.D. Va. 1965) (unappealed), may have had has since been dissipated by the *Poindexter* and *Lee* decisions cited above. But even if these tuition grants are terminated, the remaining elements of State involvement would mean that government was still entwined in the operations of the schools and the considerable momentum the schools have acquired as State-supported institutions would not be dissipated. Further, the public character of the schools would remain, and thus the segregated operations would continue to be unconstitutional under the *Evans*, *Brown*, and *Lee* decisions cited above.

In the case of the Nansemond-Suffolk Academy, I fail to understand how the Federal Government can continue to encourage the development of these segregated private schools formed to frustrate Federal policy by granting them Federal tax benefits, especially when these schools continue to be so generously aided and encouraged by State agencies as part of a State policy of blocking the Federal mandate. I strongly urge that the recent action of your agency be reconsidered. For your reference, I am enclosing a recent letter from me to Secretary of the Treasury Henry H. Fowler and a memo which accompanied that letter setting out the recent administrative and judicial developments relating to tax exempt status for segregated private schools.

I would greatly appreciate being informed of any further action your agency takes in this matter.

Sincerely yours,

(Signed) William L. Taylor,
Staff Director.

U.S. Commission on Civil Rights,
Washington, D.C., July 18, 1968.

Hon. Henry H. Fowler,
Secretary of the Treasury,
Washington, D.C.

Dear Mr. Secretary: In July 1967, the Commission completed an investigation of desegregation in Southern schools for the 1966–67 school year and issued a report containing a number of recommendations for action by Federal agencies and the Congress. In this report, which I enclose, the Commission made a specific finding on page 89 regarding the segregated private schools established throughout the South to avoid public school desegregation. The Commission found:

"Many private segregated schools attended exclusively by white students have been established in the South in response to public school desegregation. In some districts such schools have drained from the public schools most or all of the white students and many white faculty members. Under the Internal Revenue Code of 1954, institutions organized and operated exclusively for educational purposes and not for private benefit are exempt from paying income taxes and contributors to these institutions are entitled to deduct contributions, within certain limits, from their taxable income. Some racially segregated private schools have been approved by the Internal Revenue Service for the receipt of those tax benefits, while others have applications for these benefits pending before the Internal Revenue Service."

On page 99 of the report the Commission recommended that the Secretary of the Treasury should request an opinion of the Attorney General as to whether

Title VI of the Civil Rights Act of 1964 or the Internal Revenue Code authorizes or requires the Internal Revenue Service to withhold tax benefits presently being afforded by the Service to racially segregated private schools, or whether Congressional action is necessary to assure that such benefits are withheld.

Despite the Internal Revenue Service's August 2 announcement, these segregated private schools continue to flourish in some areas. In at least one Southern state, Virginia, these schools continue to accept students who receive substantial tuition grants paid out of state funds, although such tuition grant statutes have been declared unconstitutional in other states.

It now is nearly one year since the Commission's report was issued, and, as yet, we have not received any comments from the Treasury Department on our recommendation. I would like to know, first, whether the Commission's recommendation was followed and the Secretary of the Treasury did request an opinion of the Attorney General on the legality of Federal tax benefits for segregated private schools? Second, if some alternative procedure was followed to get a final decision on this difficult legal question, what was that alternative procedure and what was its outcome? Third, I would like to know what the current position of the Internal Revenue Service is with regard to Federal tax benefits for segregated private schools.

I am enclosing a staff memorandum outlining the recent administrative and judicial developments in this area.

Sincerely yours,

(Signed) WILLIAM L. TAYLOR,
Staff Director.

Enclosure.

U.S. COMMISSION ON CIVIL RIGHTS,
Washington, D.C., August 4, 1967.

Hon. HENRY H. FOWLER,
Secretary of the Treasury,
Washington, D.C.

DEAR MR. FOWLER: Enclosed is a report to the President and to the Congress on Southern School Desegregation. The report is a followup to the Commission's Survey of School Desegregation in the Southern and Border States, issued in February 1966. I call your attention especially to Recommendation No. 10 beginning on page 150 and to Appendix VIII beginning on page 225.

The report is scheduled for release Tuesday, August 8, 1967. I would be glad to have the benefit of your comments on or reaction to the report.

Sincerely yours,

(Signed) WILLIAM L. TAYLOR.

Enclosure.

UNITED STATES COMMISSION ON CIVIL RIGHTS—LEGAL APPENDIX

INEQUITY IN SCHOOL FINANCINGS THE ROLE OF LAW*

I. INEQUITY IN SYSTEMS OF SCHOOL FINANCE THROUGHOUT THE COUNTRY

Inequality in school financing is currently a major national issue. Systems of school finance recently have been struck down on the basis of inequality by courts in California, Texas, Minnesota, Arizona, and New Jersey. Appeals from some of the cases are now progressing to the Supreme Court of the United States.[1] On March 6, 1972, the President's Commission on School Finance issued its Final Report calling for numerous reforms in school finance. A number of State legislatures are in the process of making substantial changes in their systems of school finance.[2] In the wake of all these developments ,the Administration is showing increasing interest in providing large-scale Federal aid to assist in restructuring school finance. The United States Commissioner of Education, Sidney P. Marland, for example, recently said he believed the Federal Government should pay 25 to 30 percent of the cost of public education rather than the 8 percent it presently pays.[3]

Inequities in the Texas system of school finance is the focus of this Commission Report. The Report unravels three separate, cumulative ways in which the Texas system functions to provide grossly inequitable funding for predominantly Chicano school districts. First the minimum foundation formula, nominally an equalizing device, operates in such a fashion that it provides less money for the predominantly Chicano school districts.[4] The formula by which the local district fund assignment is computed is the second source of inequity. Though supposedly a fair measure of the share that districts are financially able to contribute to the minimum foundation plan, the local fund assignment formula is replete with discriminatory features.[5] The third source of inequity in the Texas system of school finance is the use of local property taxes to supplement the minimum foundation plan.[6] The cumulative effect of these inequities is that in spite of the minimum equalizing effect of State aid and the higher tax rates prevalent among predominantly Chicano school districts, per pupil expenditures from State and local revenue sources are below those in primary Anglo districts ranging from a high of about $675 in districts 20 to 30 percent Mexican American to $340 in districts 80 percent or more Mexican American.[7]

Perhaps Texas is unique in that its system of finance clearly operates to the financial detriment of minority group children (Chicano in this case).[8] The inequalities in school finance between rich and poor school districts found in Texas, however, are the rule throughout the country.[9]

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* This survey was prepared for the Commission by Howard A. Glickstein, B.A. 1951, Dartmouth College; LL.B. 1954, Yale University, LL.M. 1963, Georgetown University, and William L. Want, B.S. 1967, Washington and Lee; LL.B. 1970, Yale University.

[1] See Coons, Clune, and Sugarman, "A First Appraisal of Serrano", 2 Yale Rev. of Law and Social Action 111, 112 (winter 1971) where the authors predict that it is likely that one of the school finance cases will reach the U.S. Supreme Court in the next 18 months. See also note infra.

[2] See, e.g., Washington Post, Mar. 15, 1972, sec. B at 1, cols. 6–7 which reports that the Ways and Means Committee of the Maryland House of Delegates has approved a bill "radically redistributing State aid to public schools in Maryland. . . ." The Committee agreed to withdraw its proposal after it was assured by the Governor that he will introduce his own bill next year. Washington Post, Mar. 22, 1972 sec. C at 1, col. 8.

[3] N.Y. Times, Jan. 10, 1972, sec. E, at 25, col. 1.

[4] See pp.—supra.

[5] See pp.— supra.

[6] See pp. — supra.

[7] See pp. — supra.

[8] This report points out that, in contrast to Texas, in the other Southwestern States—California, Arizona, New Mexico, and Colorado—the majority of Chicano pupils are in predominantly Anglo districts. This made it very complex to separate out the affect of the State finance systems on Mexican Americans, as distinguished from Anglos, attending school in the same district. See pp. — supra. In California, it also appears that a majority of minority group pupils reside in districts that are not financially disadvantaged. See Coons, Clune, and Sugarman," Private Wealth and Public Education 356–57, n. 47 (1970). Coons, Clune, and Sugarman discount the relationship between race and financial inequities: "There is an understandable tendency to treat the school finance issue as an outrider of the racial problems of public education. . . .

The fact is otherwise. There is no reason to suppose that the system of district-based school finance embodies a racial basis. The districts which contain the great masses of black children ordinarily also contain great masses of white children. There well may be very significant racial dollar discrimination within districts but that is another problem; to lump it with interdistrict discrimination is totally misleading." (Emphasis added) Id. a 355–57.

A view of inequality on the national level begins with a look at the disparties among the States where average per pupil expenditures currently range from a high of approximately $1,400 in Alaska to a low of less than $500 in Alabama.[10] Nor does State expenditures necessarily reflect the relative importance a State places on education. For example, Mississippi and Alabama, which rank 49th and 50th in terms of per pupil expenditures devote 45 percent and 40.2 percent respectively of their public expenditures to education. Alaska and New York, on the other hand, which rank first and second in terms of per pupil expenditures devote only 32.1 percent 33.9 percent respectively of their public expenditures to education.[11]

State averages, by definition, mask the wide range of disparities within the States.[12] In Wyoming, expenditures range from a low of $618 per pupil to a high of $14,554; in Kansas, from $454 to $1,831; in Vermont, from $357 to $1,517; in Washington, from $434 to $3,406; in Oklahoma, from $342 to $2,566; in Colorado, from $444 to $2,801; and in Pennsylvania, from $484, to $1,401.[13]

In California expenditures per pupil for Emery Unified and Newark Unified, both school districts in Alameda County, were $2,223 and $616 respectively.[14] In New Jersey 14 districts with a total of 13,391 pupils spent below $700 per pupil while 16 districts with 29,653 pupils spent over $1,500 per pupil.[15] In New York, two Long Island school districts within 10 miles of each other—Great Neck and Levittown—spent $2,078 and $1,189 respectively per pupil.[16]

Not only does the current system of school finance produce spectacular divergencies in expenditures for students in different school districts, but it also creates inequalities in terms of the taxes paid to finance educational expenditures. Local funds, derived almost exclusively from the real property tax, provide better than one-half the revenue for elementary and secondary education for the Nation as a whole.[17] This subjects educational financing to the massive disparities in tax base that characterize American local governments.[18] Consequently, the richer a district is, the less severely it need tax itself to raise funds. Stated another way, a man in a poor district must pay higher local rates for the same or lower per pupil expenditures.[19]

In Alameda County, California, Emery Unified School District manages to spend $2.223 per pupil with a $2.57 tax rate while Newark Unified must tax at rate of $5.65 to spend $616 per pupil.[20] In Essex County, New Jersey, Millburn with a $1.43 school tax rate, compared to $3.69 in Newark, has more teachers per pupil than Newark, spends more for teachers' salaries per pupil ($685 to $454) and has more professional staff per pupil (61 to 53).[21]

In Arizona, Morenci Elementary School District produced $250 per pupil in local revenue with a tax rate of $.67. Roosevelt Elementary, however, had to use a tax rate of $7.14 to produce a mere $99 in local revenue.[22] In Texas, the

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[9] See Coons, Clune, and Sugarman, "Educational Opportunity: A Workable Constitutional Test for State Financial Structures", 57 Cal. L. Rev. 305, 317 (1969): "(1) Poorer districts in general tend to make a greater tax effort for education than do wealthier districts. (2) Poorer districts in general have significantly lower educational offerings than do wealthier districts."

[10] See appendix A.

[11] See N.Y. Times, Jan. 10, 1972, sec. E at 2 (table).

[12] See appendix B.

[13] Ibid.

[14] *Serrano* v. *Priest*, 5 Cal. 3d 584, 600 n. 15, 487 P. 2d 1241, 96 Cal. Rpts. 601 (1971).

[15] *Robinson* v. *Cahill*, No. L–18704–69 at 23 (Super. Ct. N.J. 1971).

[16] Report of he New York State Commission on The Quality Cost, and Financing of Elementary and Secondary Education, Press Summary, Jan. 30, 1972 at 2.

[17] In 1970–71 local district revenues provided 52 percent of the funds for public education; States provided 44.1 percent and the Federal Government provided 6.9 percent. See N.Y. Times, Jan. 10, 1972 sec. E at 2 (table).

[18] See Berke and Callahan, "Inequities in School Finance" 61 (1971) a paper presented at the 1971 Annual Convention of the American Academy for the Advancement of Science and reprinted by the Select Committee on Equal Educational Opportunity, U.S. Senate, 92d Cong. 2d sess. (Comm. print 1972.)

[19] Berke states that 'one of the cruel ironies in the current approach to supporting schools in Texas is that the communities which have the least money for their schools are the very districts which tax themselves most heavily to raise school revenues." Berke, Affidavit in *Rodriguez* v. *San Antonio* C.A. 68–1755A at 13 (W.D. Texas 1971).

[20] These, and other discrepancies in California, are illustrated by the chart in appendix C.

[21] *Robinson* v. *Cahill* op. cit. supra note at 20.

[22] *Hollins* v. *Shofstall* No. C–253652 at 5 (Super. Ct. Maricopa Cty. 1971).

10 districts with above $100,000 market value of taxable property per pupil would have to tax at $.64 to obtain the highest yield; the 4 districts below $10,000 would have to tax at $12.83.[23]

A further glaring inequity in current systems of school finance is that variations in expenditures tend to be inversely related to educational need. City students, with greater than average educational needs, consistently had less money spent on their education and higher pupil/teacher ratios to contend with than did their high-income counterparts in the favored schools of suburbia.[24] In 1967, Los Angeles, for example, spent $601 per pupil, while its suburb Beverly Hills spent $1,192. New York City spent $854; its suburb Great Neck, $1,301.[25] Dr. James B. Conant deplored these inequities:

"The contrast in the money spent per pupil in wealthy suburban schools and in slum schools of the large cities challenges the concept of equality of opportunity in American public education." [26]

The current pattern of resource allocation has been brought about by the State in two ways. First, the local districts with unequal taxable resources have been created by the States and second, State aid systems have been adopted that are insufficiently equalizing to offset the disparities among the districts.

School districts are creatures of the State. As the court noted in *Serrano* v. *Priest*, "Governmental action drew the school district boundary lines, thus determining how much local weath each district would contain." [27] Having created financially disparite districts, the States have made efforts to equalize the differences through financial aid to local school districts.

Approximately 44 percent of revenues for elementary and secondary education is contributed by the States through flat grants or equalizing grants or combinations of the two. The flat grant consists of an absolute number of dollars distributed to each school district on a per pupil or other unit standard. Plans employing equalizing grants (or foundation plans) are more complicated and have a number of variants. In its simplest form, a foundation plan consists of a State guarantee to a district of a minimum level of available dollars per student, if the district taxes itself at a specified rate. The State aid makes up the difference between the guaranteed amount and local collections at the specified rate.[28]

After its original proposal in 1924, the equalizing approach became the model of numerous State adaptations. Compromises with the strict application of the equalization objectives were made in most States to accommodate: (a) the long-standing tradition of flat grants; (b) the reluctance of State officials to increase State taxes to fully finance equalization plans; and (c) the desire of some localities to finance truly superior schools.[29] In most States the foundation plan ended up providing the poorest districts with basic education programs at a level well below that of the wealtheir districts that were left with ample local tax leeway to exceed the minimum foundation plan level without unduly straining local resources.[30]

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[23] The complete chart from which this information was taken, included in the affidavit submitted by Dr. Joel Berke in *Rodriguez* v. *San Antonio* C.A. No. 68–1755A (W.D. Texas 1971), is attached as appendix D.

[24] See Berke and Kelly, "The Financial Aspects of Equality of Educational Opportunity" 10 (1971), reprinted by the Select Committee on Equal Educational Opportunity, U.S. Senate, 92d Cong., 2d sess. (comm. print 1972). See also U.S. Commission on Civil Rights "Racial Isolation in the Public Schools" (1967) which discusses the problems cities face in financing their schools. "Under the system of financing, the adequacy of educational services is heavily dependent on the adequacy of each community's tax base. With the increasing loss of their more affluent white population, central cities also have suffered a pronounced erosion of fiscal capacity. At the same time, the need for city services has increased, particularly in the older and larger cities. The combination of rising costs and a declining tax base has weakened the cities' capacity to support education at levels comparable to those in the suburbs." Id. at 25. The Commission explains that one reason for these disparities in educational spending between cities and suburbs are the greater claims made on city budgets for other services. Cities spend a third more per capita for welfare and two times more per capita for public safety than suburbs, while suburbs spend nearly 50 percent more per capita for education. Suburbs spend nearly twice the proportion of their total budget upon education as cities. Id. at 26.

[25] The phenomena of divergent expenditures in the same metropolitan area is further illustrated by the chart in appendix E.

[26] Conant, "Slums and Suburbs" 146 (1961).

[27] 5 Cal. 3d 584, 603 (1971). See also Schoettle, "The Equal Protection Clause in Public Education", 71 Cal. L. Rev. 1355, 1410 (1971): "Allocation of tax base is no less a State act than would be the distribution of dollars by the State itself in unequal and arbitrary amounts to residents of different units of local government."

[28] For a full discussion of State equalization plans see Coons, Clune, and Sugarman, "Private Wealth and Public Education," ch. 2 (1970): statement of Charles S. Benson, hearings before the Select Committee on Equal Educational Opportunity of the U.S. Senate, 92d Cong., 1st sess., pt. 16A, at 6709, 6712–6715 (hereinafter referred to as "equal educational opportunity hearings,")

[29] See Advisory Committee on Intergovernmental Relations, "State Aid to Local Government" 40 (1969).

Although Federal educational aid programs make up only about 8 percent of all revenues for public education, they have had some impact on equalizing resources. Title I of the Elementary and Secondary Education Act, enacted in 1965, accounts for close to 40 percent of Federal funds expended on elementary and secondary education.[31] It is designed to meet the educational needs of children from low income families;[32] because it is responsive to educational needs of the poor it has had an equalizing effect.[33] Other Federal programs, however, often serve to reinforce disparities. Funds under the National Defense Education Act, for example, sometimes have gone disproportionately to suburban schools.[34]

Aid to federally impacted areas never was intended to have an equalizing effect.[35] It is designed merely to compensate for the presence of large scale tax exempt Federal activities; need is not a criterion. Nevertheless, "it is the small but important share of educational financing that has been contributed by the Federal Government that has been the most effective fiscal contribution to equal educational opportunity in American school finance."[36]

II. THE PURSUIT OF "EQUAL EDUCATIONAL OPPORTUNITY"

The fundamental relationship between education and democracy has been a premise of our form of government. George Washington stressed this in his Farewell Address:

"Promote then as an object of primary importance, Institutions for the general diffusion of knowledge. In proportion as the structure of a government gives force to public opinion, it is essential that public opinion should be enlightened."[37]

Thomas Jefferson echoed this conviction:

"I think by far the most important bill in our whole code [of Virginia] is that for the diffusion of knowledge among the people. No other sure foundation can be devised for the preservation of freedom and happiness." [38]

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[30] Ibid. See statement of National Committee for Support of the Public Schools, "Equal Educational Opportunity Hearings" pt. 16 D–3 at 8287, 8288 which summarized the major inadequacies of State equalization programs: "State systems of education finance distribute State funds through foundation programs which fail to correct the wealth disparities among local districts. While these programs vary widely in specifics from State-to-State they frequently suffer from three major flaws, and a host of minor ones:

"Foundation amounts—the maximum amount the State assures each district—are inadequate. For instance, California's maximum amount is $355 per elementary pupil, Maryland's is $370.

"Flat or minimum grants which award money on the basis of number of pupils to all districts, wealthy or poor. When they are awarded as part of the maximum foundation amount, as in California, or are substituted for districts not qualifying for minimum amounts under an equalization program, as in Maryland, they subsidize the wealthy and attenuate the disparities.

"Districts must raise money locally to support education programs superior to those provided for in the foundation amount. This gives rise to disparities in tax effort and in expenditures. Even though poorer districts make the same or greater tax effort on behalf of their schools, they are able to purchase much less education than the rich." It also is noteworthy that the basis of measurement used to determine a district's allocation tends to discriminate against cities. Funds are distributed on the basis of pupil weighted average daily attendance (WADA). The WADA formula has an adverse impact on cities because of their truancy problems. Cities, therefore, typically have enrollments greater than the WADA while suburban and rural districts have enrollments less than the WADA. See Berke, Goettel, and Andrew, "Equity in Financing New York City Schools: The Impact of Local, State, and Federal Policy", prepared for publication in February 1972 issue of "Education and Urban Society." See also Kirp, "The Poor, the Schools, and Equal Protection." "Equal Educational Opportunity" 139, 168 (1969); U.S. Commission on Civil Rights, "Racial Isolation in the Public Schools" 28 (1967): "State aid programs designed decades ago to assist the then poor suburban districts often support the now wealthier suburbs at levels comparable to or higher than the cities."

[31] See Berke and Kelly, op. cit. supra note at 27; U.S. Commission on Civil Rights, "Racial Isolation in the Public Schools" 28–29 (1967); Advisory Committee on Intergovernmental Relations, "State Aid to Local Government" 37–39 (1969).

[32] For a discussion of title I and other Federal aid programs that assist minority group children, see Glickstein, "Federal Educational Programs and Minority Groups," 38 J. of Negro Ed. 303 (1969).

[33] See Berke and Kelly, op. cit. supra note at 27, 30; Berke and Callahan, op. cit. supra note at 73–75; U.S. Commission on Civil Rights, "Racial Isolation in the Public Schools" 29 (1967).

[34] U.S. Commission on Civil Rights, "Racial Isolation in the Public Schools" 28 (1967).

[35] Ibid.

[36] Berke and Callahan, op. cit. supra note at 73.

[37] Farewell Address, 35 "The Writings of George Washington" (Bicentennial edition) 230. See also Id. at vol. 28, p. 27.

Our Founding Fathers, moreover, regarded the provision of education as a public function. "It is not too much to say," wrote John Adams, "that schools for the education of all should be placed at convenient distances and maintained at the public expense." [39]

Public education in the United States dates back to the Massachusetts School law of 1647, and within a generation most of the other New England colonies had followed Massachusetts' example.[40] Development of public schools in the middle and southern colonies was much slower; education outside of New England still was primarily a private matter at the close of the 18th century.[41] Public interest in public education increased during the first half of the nineteenth century and by 1850 "the battle for free state schools" was won in the Northern States.[42] Progress was slower in the South but by 1918 education in every State of the Union was not only free but compulsary.[43]

Today, the duty of government to provide education is generally conceded. It has been specifically provided for in the Constitutions of 50 states of the Union [44] and has been given eloquent recognition in numerous judicial opinions such as that of the Supreme Court of Michigan which said:

"We supposed it had always been understood in this state that education, not merely in the rudiments, but in an enlarged sense, was regarded as an important practical advantage to be supplied at their option to rich and poor alike, and not as something pertaining merely to culture and accomplishment to be brought as such within the reach of those whose accumulated wealth enabled them to pay for it.[45]

Education was widely regarded as a means of fostsering social cohesion. Samuel Lewis, first superintendent of common schools in Ohio, wrote in 1836:

"Take fifty lads in a neighborhood, including rich and poor—send them in childhood to the same school—let them join in the same sports, read and spell in the same classes, until their different circumstances fix their business for life; some go to the field, some to the mechanic's shop, some to merchandise; one becomes wealthy; the majority live on with mere competency—a few are reduced to beggary! But let the most eloquent orator, that ever mounted a western stump, attempt to prejudice the minds of one part against the other—and so far from succeeding, the poorest of the whole would consider himself insulted." [46]

But certain structural characteristics of our system of public education worked against the goal of social cohesion. For one thing, our schools were segregated by race, and, in many places, by ethnic background. It was in the area of race that the first battles to achieve equal educational opportunity were fought.

The attack began by efforts to insure that "separate" facilities were, in fact, "equal," as required by the Supreme Court's decision in *Plessy* v. *Ferguson*.[47]

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[38] Letter to George Wythe, 10 "The Papers of Thomas Jefferson" 244 (Princeton University Press 1954). See also Id. at vol. 9, p. 151; 6 "The Works of John Adams" 168 (1851); U.S. Commission on Civil Rights, "Racial Isolation in the Public Schools" 1-2 (1967). Early legislation reflected the importance attached to education. For example, the northwest ordinance of 1787 provided: "Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." 1 "Documents of American History" 131 (Commager ed. 1958).

[39] "The Works of John Adams," op. cit supra note.

[40] Cubberley, "Public Education in the United States" 17–19 (1919); 1 "Documents in American History" 29 (Commager ed. 1958).

[41] Cubberley, op. cit. supra note at 77.

[42] Id. at 101–115; 118–152.

[43] Id. at 246–254; Morison and Commager, II "The Growth of the American Republic" 306–307 (1956).

[44] See, e.g., Constitution of Florida, art. 12, sec. 1; Constitution of Idaho, art. 9, sec. 1; Constitution of Michigan, art. XI, sec. 1; Constitution of North Carolina, art. I, sec. 27; Constitution of Rhode Island, art. 12, sec. 1. See also Article 26.1 of the United Nations Universal Declaration of Human Rights which provides: "Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available, and higher education shall be equally accessible to all on the basis of merit."

[45] *Stuart* v. *School District No. 1 of Kalamazoo*, 30 Mich. 69, 75 (1874). See also *Brown* v. *Board of Education*, 347 U.S. 483, 493 (1954); *City of Louisville* v. *Commonwealth*, 134 Ky. 488, 492–93, 121 S.W. 411 (1909); *Malone* v. *Hayden*, 329 Pa. 213, 223–24, 197 Atl. 344, 352 (1938); *Bissell* v. *Davison*, 65 Conn. 183, 190–91, 32 Atl. 348, 349 (1894); *Herold* v. *Parish Board of School Directors*, 136 La. 1034, 68 So. 116, 119 (1915); 1 U.S. Commission on Civil Rights, *Racial Isolation in the Public Schools* 260 (1967).

[46] Quoted in Gardner, J., "Excellence" 117 (1961). See also Wilson, "Social Class and Equal Educational Opportunity," in "Equal Educational Opportunity" 81-82 (1969).

[47] 163 U.S. 537 (1896).

Courts found violations of the equal protection clause of the Fourteenth Amendment[48] where it was shown that there were inequalities between Negro and white schools in buildings and other physical facilities, course offerings, length of school term, transportation facilities, extracurricular activities, cafeteria facilities and geographical convenience.[49]

In *Missouri ex rel. Gaines* v. *Canada*[50] and in *Sipuel* v. *Board of Regents*,[51] the Supreme Court—considering alleged tangible inequalities—invalidated school segregation where it was shown that the quality of the facilities provided for Negroes was unequal to the quality of the facilities afforded whites. Next, the Court considered whether intangible factors— more difficult to measure than bricks and mortar—could be considered in determining whether there has been a denial of equal educational opportunities. The Court answered affirmatively in *Sweat* v. *Painter*,[52] where it held that more than physical facilities needed to be considered in judging whether Texas was providing equal educational opportunity in separate facilities to black law students. "What is more important", the Court stressed, is the fact that the University of Texas Law School "possesses to a far greater degree those qualities which are incapable of objective measurement but which make for greatness in a law school."[53] Similarly, in *McLaurin* v. *Oklahoma State Regents for Higher Education*[54] the Court required that a black student admitted to a white graduate school be treated like all other students and not segregated within the school. Again, the Court relied upon "intangible considerations", including "his ability . . . to engage in discussion and exchange views with other students . . . ."[55]

The fatal blow to the separate but equal doctrine was struck in 1954 with the Court's decision in *Brown* v. *Board of Education*.[56] Here the Court held that it was unnecessary in each case to demonstrate the harm caused by segregation. Rather, a universal rule was appropriate:[57]

"[I]n the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated . . . are . . . deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment."

Of especial importance to the Court in assuring equal treatment was the significance it placed on the role of public education. The Court said:[58]

"Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms."

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[48] The 14th amendment to the Constitution provides, in pertinent part: * * * * nor shall any State * * * deny to any person within its jurisdiction the equal protection of the laws."

[49] See, e.g., *Sipuel* v. *Board of Regents*, 332 U.S. 631 (1948); *Missouri ex rel. Gaines* v. *Canada*, 305 U.S. 337 (1938); *Gong Lum* v. *Rice*, 275 U.S. 78 (1927); *Carter* v. *School Board*, 182 F. 2d 531 (4th Cir. 1950); *Davis* v. *County School Board*, 103 F. Supp. 337 (E.D. Va. 1952), rev'd sub nom. *Brown* v. *Board of Education of Topeka*, 347 U.S. 483 (1954); *Butler* v. *Wilemon*, 86 F. Supp. 397 (N.D. Tex. 1949); *Pitts* v. *Board of Trustees*, 84 F. Supp. 975 (E.D. Ark. 1949); *Freeman* v. *County School Board*, 82 F. Supp. 167 (E.D. Va. 1948), aff'd, 171 F. 2d 702 (4th Cir. 1948). See also Leflar and Davis, "Segregation in the Public Schools—1953," 67 Harv. L. Rev. 377, 430–35 (1954); Horowitz, "Unseparate but Unequal—The Emerging Fourteenth Amendment Issue in Public School Education," 13 U.C.L.A. L. Rev. 1147, 1149 (1966). Mary E. Mebane [Liza], a teacher at South Carolina State College, recently described what it was like to go to a separate but unequal school: "It's when you're in the second grade and your eye reads the name 'Bragtown High School' and you also see in the front of the book 'discard' and even though you're only 7 years old you know, as you turn the pages that have tears patched with a thick yellowing tape, that you're using a book that a white girl used last year and tore up, and your mother is paying book rent just like her mother paid book rent. You get the second-hand book and it gives you a thing about second-hand books that does not go away until you are teaching yourself and are able to buy all the new ones you want." N.Y. Times, Mar. 15, 1972, at 43, col. 1–2.

[50] 305 U.S. 337 (1968).

[51] 332 U.S. 631 (1948).

[52] 339 U.S. 629 (1950).

[53] Id. at 634.

[54] 339 U.S. 637 (1950).

[55] Id. at 641. See also 1 U.S. Commission on Civil Rights, "Racial Isolation in the Public Schools" 246–247 (1967); U.S. Commission on Civil Rights "Freedom to the Free" 144–147 (1963).

[56] 347 U.S. 483 (1954).

[57] Id. at 495.

[58] Id. at 493.

The *Brown* decision also has been applied to segregated schooling involving Mexican American children.[59]

Since the *Brown* decision, there has been an unremitting struggle—through the courts, the legislatures and executive action—to eliminate racial discrimination from the operation of our public schools.[60] The increasing sensitivity that *Brown* created to inequities among schools broadened the search for equality to factors other than race.[61] A problem of lower visibility that increasingly has attracted the attention of scholars, lawyers and the courts is that of interdistrict financial disparities. Equal educational opportunity not only involves the elimination of invidious racial and ethnic discriminations but also requires that public money expended on education be distributed in a non-discriminatory manner. What formula is appropriate for determining whether or not education funds are being dispersed to guarantee equal educational opportunities?

The answer to this question does not necessarily depend on a simple quantitative weighing of resources; at times, the attainment of equality requires unequal efforts and expenditures. An adequate definition of "equal educational opportunity" requires the consideration of varied factors. Many formulations have been advanced.[62]

The definitions generally can be categorized as those which place restraints on the State and those which impose upon the State some type of affirmative obligation. In the first category are formulations which ordain that a State's educational financing system may not discriminate, against the poor,[63] on the basis of the wealth of the residents of a school district,[64] on the basis of geography,[65] or against taxpayers by imposing unequal burdens for a common State purposes.[66] Definitions of this sort are particularly suitable for the courts which usually are reluctant to inject themselves into such subjective and substantive questions as the appropriate product of an educational system. These definitions permit the State to design its educational system in a variety of ways so long as it does not violate some relatively clear formulation of equal protection.[67]

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[59] See, e.g., *Mendez* v. *Westminster School District of Orange County*, 64 F. Supp. 544 (S.D. Cal. 1946), aff'd, 161 F. 2d 776 (9th Cir. 1948); *Delgado* v. *Bastrop Independent School District*, Civ. No. 388 (W.D. Tex. 1948); *Gonzales* v. *Sheely*, 96 F. Supp. 1004 (D.C. Ariz. 1951); *Romero* v. *Weakley*, 226 F. 2d 399 (9th Cir. 1955); *Hernandez* v. *Driscoll*, Civ. No. 1384 (S.D. Tex. 1957), 2 Race Rel. Rep. 329 (1957); *Cisneros* v. *Corpus Christi Independent School District*, 324 F. Supp. 599, 604–606 (S.D. Tex. 1970). See also U.S. Commission on Civil Rights, *Report 1, Mexican American Education Study* 11–13 (1971).

[60] For an account of this struggle, see the following reports of the U.S. Commission on Civil Rights: "1959 Report"; "1961 Report, Volume 2"; "Civil Rights, 1963"; "Freedom to the Free" (1963); "Survey of School Desegregation in Southern and Border States, 1965–66" (1966); "Southern School Desegregation 1966–67" (1967); "Federal Enforcement of School Desegregation" (1969).

[61] But see David K. Cohen, "The Economics of Inequality", Sat. Rev. 64,79 (Apr. 19, 1969) who argues that "much of the interest in intrastate fiscal disparities arises precisely from despair over the evident failure of efforts to resolve" the two central problems of public education of our times—its organization along racial lines and its apparent inability to reduce racial and class disparities in school outcomes. See also Peter Milius in the Washington Post, Nov. 28, 1971: "Northern liberals who used to stand forcefully for school desegregation are suddenly finding it impolitic, and are looking for alternatives, ways to stay 'liberal' without being in favor of busing . . . . The answer that many are tending toward is equalization for desegregation, moving dollars around instead of children. They note that, after all, the object of desegregation all along was only equal educational opportunity. If equalization sounds a little like 'separate but equal', that has not so far bothered these Northerners."

[62] See, e.g., Coons, Clune, and Sugarman, "Educational Opportunity: A Worthwhile Constitutional Test for State Financial Structures," 57 Cal. L. Rev. 305, 338–340 (1969); Wise, "Rich Schools, Poor Schools—The Promise of Equal Opportunity" 143–159 (1969); Kirp, "The Poor, the Schools and Equal Protection" in "Equal Educational Opportunity" 139, 140, 156 (1969); Coleman, "The Concept of Equality of Educational Opportunity" in "Equal Educational Opportunity" 9 (1969); Silard and White, "Intrastate Inequalities in Public Education: The Case for Judicial Relief Under the Equal Protection Clause," 1970 Wis. L. Rev. 7, 25–28 (1970).

[63] See amici curiae brief of Center for Educational Policy Research, Center for Law and Education in *Serrano* v. *Priest*.

[64] See Coons, Clune, and Sugarman, op. cit. supra note at 311: "The quality of public education may not be a function of wealth other than the wealth of the State as a whole."

[65] See Wise, op. cit. supra note at 146: "Equality of educational opportunity exists when a child's educational opportunity does not depend upon either his parents' economic circumstances or his location within the State."

[66] See *Hollins* v. *Shofstall*, No. C-253652 (Ariz. Super. Ct., Maricopa Cty., Jan. 13, 1971).

[67] Wise, op. cit. supra note at 158–159.

Definitions in this category have the virtue of "modesty, clarity, flexibility and relative simplicity." [68]

The definitions of "equal educational opportunity" which impose an affirmative obligation on a State [69] run from the simple—"one scholar, one dollar" [70]—to the amorphous—"[A] school district is constitutionally required to provide the best possible equality of opportunity . . ." [71]—to the utopian—"equal educational achievement for every child" [72]—to definitions which stress the distribution of funds on the basis of need and then seek to formulate some standards for defining "needs." [73] Some of these formulas have been advanced in school finance litigation, and we shall now turn our attention to a consideration of the cases.

III. THE SEARCH FOR JUDICIAL REMEDIES

A. *The Appropriate Constitutional Standard*

As we have seen, the equal protection clause of the Fourteenth Amendment has been the battering ram in the pursuit of racial and ethnic equality in public education. It is this same amendment that has been chosen as the weapon of those seeking equality in educational financing. The meaning and sweep of the equal protection clause has been a frequent issue before the Supreme Court and standards have been developed for applying that clause in various situations. These standards provide the backdrop against which the recent school finance cases have been brought. We will review those standards, before turning to the recent cases.

The basis of an equal protection attack on governmental action is that two groups similarly situated have been treated differently *e.g.*, black children and white children, similarly seeking a public education, are required to go to separate schools.

The Court initially developed standards for judging equal protection violations in cases involving economic regulation. In *Gulf, Colorado and Santa Fe Ry.* v. *Ellis*, the Court said that legislative classifications "must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis." [74]

The Court also has emphasized that the burden of attacking a legislative act lies wholly "on him who denies its constitutionality" *Brown* v. *Maryland*.[75] In *Lindsley* v. *Natural Carbonic Gas Co.*,[76] summarizing the rules by which equal protection arguments must be tested, the Court noted that the person attacking the statutory classification "must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary" and that "if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed."[77]

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[68] See Coons, Clune, and Sugarman, op. cit. supra note at 340.

[69] See Coleman, op. cit. supra note. Coleman describes the evolving role of Government and educational institutions in assuring equal educational opportunities. Initially the role of the community and educational institutions were relatvely passive; all that was expected was the provision of a set of free public resources. It was then up to the family and child to decide how to use these resources. Today, the responsibility to create achievement lies with the educational institution, not the child.

[70] See *Spano* v. *Board of Education of Lakeland Central School District 7* (N.Y. Sup. Ct., Westchester County Jan. 17, 1971).

[71] Comment, "Equality of Educational Opportunity: Are Compensatory Programs Constitutionally Required?" 42 S. Cal. L. Rev. 146, 150 (1969).

[72] Silard and White, op. cit. supra note at 25–26.

[73] See Id. at 26–28; Kirp, op. cit. supra note; Cf. Cohen, op. cit. supra note at 78: ". . . schoolmen and researchers haven't much evidence about the educational techniques that might satisfy a need criterion, or how much they might cost. Such news is bound to dampen judicial or legislative enthusiasm for a criterion of resource allocation." See general comment "The Evolution of Equal Protection—Education, Municipal Services, and Wealth." 7 Harv. Civ. Lib.—Civ. Rights L. Rev. 103, 172–784.

[74] *Gulf, Colorado and Santa Fe Ry.* v. *Ellis*, 165 U.S. 150, 155 (1897). See also *Southern Ry.* v. *Greene*, 216 U.S. 400, 417 (1910); *Atchison Santa Fe Ry.* v. *Vosburg*, 238 U.S. 56, 59 (1915); *Rouster Guano Co.* v. *Virginia*, 253 U.S. 412, 415. (1920); *Truax* v. *Corrigan*, 257 U.S. 312, 337 (1921); *Airway Corp.* v. *Day*, 266 U.S. 71, 85 (1924); *Power Mfg. Co.* v. *Saunders*, 274 U.S. 490, 493 (1927); *Louisville Gas Co.* v. *Coleman*, 277 U.S. 32, 37 (1928); *Ohio Oil Co.* v. *Conway*, 281 U.S. 146, 160 (1930); *Metropolitan Co.* v. *Brownwell*, 294 U.S. 580, 583 (1935); *Hartford Co.* v. *Harrison*, 301 U.S. 459, 462 (1937); *Asbury Hosp.* v. *Cass County*, 326 U.S. 207, 214 (1945); *Morey* v. *Doud*, 354 U.S. 457, 465 (1957); *Baxstrom* v. *Herold*, 383 U.S. 107, 111 (1966); *Rinaldi* v. *Yeager*, 384 U.S. 305, 309 (1966).

[75] 25 U.S. (12 Weat.) 266, 277 (1827).

[76] 220 U.S. 61, 78–79 (1911).

But the Court has not been as solicitous of legislative enactments that were alleged to abridge rights of free speech and association, protected by the First Amendment. In *Schneider* v. *State*,[78] for example, the Court observed that when a State abridges—

". . . fundamental personal rights and liberties . . . the courts should be astute to examine the effect of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public convenience may well support regulations directed at other personal activities, but be insufficient to justify such as diminishes rights so vital to the maintenance of democratic institutions." And in *Shelton* v. *Tucker*,[79] the Court used these words: "[E]ven though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgement must be viewed in the light of less drastic means for achieving the same basic purpose."

In *Board of Education* v. *Barnette*,[80] involving the constitutionality of the public school flag salute requirement, the Court said: "The rights of a State to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which the legislature may have a "rational basis" for adopting. But freedoms of speech and of press, of assembly and of worship may not be infringed on such slender grounds."

Nor is it only in the area of the First Amendment that the Court gives especially close scrutiny to legislative action. Thus, in *United States* v. *Carolene Prods. Co.*,[81] the Court noted that "[t]here may be a narrower scope for operation of the presumption of constitutionality when legislation appears on its face to be within a specific prohibition of the Constitution such as those of the first ten amendments, which are deemed equally specific when held to be embraced with the Fourteenth."

In time, the Court recognized that legislative classifications attacked under the Fourteenth Amendment, beyond those encroaching on rights protected by the first ten amendments, could not be treated uniformally and subjected to a "rational basis" test. Different tests were required depending upon the nature of the classifying factor and the interest affected. Thus, the Court has concluded that legislative classifications involving "suspect"[82] criteria or affecting "fundamental rights" will be held to deny equal protection unless justified by a "compelling state interest".[83] In *Shapiro* v. *Thompson*,[84] the Court articulated this standard:

"Since the classification here touches on the fundamental right of interstate movement, its constitutionality must be judged by the stricter standard of whether it promotes a *compelling* state interest. Under this standard, the . . . [requirement that new residents to an area wait a one-year period before being eligible for welfare assistance] violates the Equal Protection Clause."

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[77] The latter of these two rules, which has been stated on innumerable occasions since, see, e.g., *Rast* v. *Van Deman and Lewis Co.*, 240 U.S. 342, 357 (1916); *Crescent Cotton Co.* v. *Mississippi*, 257 U.S. 129, 137 (1921); *Heisler* v. *Thomas Colliery Co.*, 260 U.S. 245, 255 (1922); *State Board of Tax Comm.* v *Jackson*, 283 U.S. 527, 537 (1931); *Metropolitan Co.* v. *Brownell*, 294 U.S. 580, 584 (1935); *Carmichael* v. *Southern Coal and Coke Co.*, 301 U.S. 495, 509 (1937); *United States* v. *Carolene Products Co.*, 304 U.S. 144, 154 (1938); *Asbury Hosp.* v. *Cass County*, *op. cit. supra* note at 215; *Morey* v *Doud*, *op. cit. supra* note at 464; *Allied Stores* v. *Bowers*, 358 U.S. 522, 528 (1959); *McGowan* v. *Maryland*, 366 U.S. 420, 426 (1961), appears to have been first stated in *Munn* v. *Illinois*, 94 U.S. 113, 132 (1876). In *Munn*, an Illinois statute seeking to regulate public warehouses and the storage and inspection of grain was challenged on equal protection grounds. In the cases just cited which repeat the *Munn* language, all involve the matter of taxation or economic regulation.

[78] 308 U.S. 147, 161.

[79] 364 U.S. 479, 488.

[80] 319 U.S. 624, 639 (1943). See also *Kovacs* v. *Cooper*, 336 U.S. 77, 95 (1949); *Bates* v. *Little Rock*, 361 US. 516, 525 (1960); *NAACP* v. *Alabama*, 357 U.S. 449 (1958); McKay, "The Preference for Freedom", 34 N.Y. U. L. Rev. 1182 (1959); Comment, "An Informer's Tale: Its Use in Judicial and Administrative Proceedings", 63 Yale L. J. 206, 228 (1953).

[81] 304 U.S. 144, 152 n. 4 (1938).

[82] For a summary of the different ways in which the "suspect" classification standard has been described, see Comment, "Equal Protection in the Urban Environment: The Right to Equal Municipal Services", 46 Tul. L. Rev. 496, 508 n. 70 (1972).

[83] The "rational basis" and "compelling state interest" tests have been variously described as the "old" or "standard" test and the "new" or "strict" test. For a further discussion of these tests see Comment, "Equal Protection in the Urban Environment: The Right to Equal Municipal Services", 46 Tul L. Rev. 496, 497–99 (1972); Comment, "*James* v. *Valtierra:* Housing Discrimination by Referendum?", 39 Univ. Chic. L. Rev. 115, 119–20 (1971).

[84] 394 U.S. 618, 638 (1969).

Among the criteria the Court has regarded as suspect are race, *Bolling* v. *Sharpe* ("Classifications based solely upon race must be scrutinized with particular care, since they are contrary to our traditions and hence constitutionality suspect");[85] lineage, *Hirabayashi* v. *United States* ("Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality");[86] wealth, *Harper* v. *Virginia Board of Elections* ("[l]ines drawn on the basis of wealth or property, like those of race . . . are traditionally disfavored");[87] and, possibly, illegitimacy.[88] Compare *Levy* v. *Louisiana*,[89] with *Labine* v. *Vincent*.[90] In sum, the Court has regarded as "suspect" classifications those classifications that discriminate against an individual on the basis of factors over which he has no control.[91]

Included in the category of interests that the Court has regarded as fundamental are voting,[92] procreation,[93] interstate travel,[94] marriage,[95] political association,[96] and the opportunity to earn a living.[97] Some lower courts have classified education as a fundamental interest.[98]

When a challenged classification involves a "fundamental interest", just as in the case of a "suspect" classification, the State's basis for the classification must be more than "rational",[99] the State has the burden of showing that it was without alternatives and had a "compelling" need to classify as it did.[100] Summarizing this test, one commentator has stated:

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[85] 347 U.S. 497, 499 (1954). See also *Korematsu* v. *United States*, 323 U.S. 214, 216 (1944); *Loving* v. *Virginia*, 388 U.S. 1, 11 (1967); *McLaughlin* v. *Florida*, 379 U.S. 184 (1964). *Cf. Sherbert* v. *Verner*, 374 U.S. 398 (1963) where, in a due process context, the Court applied the compelling interest text to a classification related to religion.

[86] 320 U.S. 81, 100 (1943). See also *Yick Wo* v. *Hopkins*, 118 U.S. 356 (1885); *Yu Cong. Eng.* v. *Trinidad*, 271 U.S. 500 (1926); *Hill* v. *Texas*, 316 U.S. 400 (1942); *Hernandez* v. *Texas*, 347 U.S. 475 (1954).

[87] 383 U.S. 663, 668 (1966). *Harper* has been called "the turning of America's conscience from the narrow problem of Negro rights to a wider recognition of the disadvantaged position of the poor of all races." Cox, "Constitutional Adjudication and the Promotion of Human Rights" 80 Harv. L. Rev. 91, 180 (1966). *Cf.* Mr. Justice Jackson concurring in *Edward* v. *California*, 314 U.S. 160, 181 (1941). In *McDonald* v. *Board of Election Comm.*, 394 U.S. 802 (1969) the Court declined to use the compelling interest test and noted that the classification at issue was not based on race or wealth, "two factors which would *independently* render a classification highly suspect. . . ." *Id.* at 807 (emphasis added). See also *Griffin* v. *Illinois*, 351 U.S. 12 (1956); *Burns* v. *Ohio*, 360 U.S. 252 (1959); *Smith* v. *Bennett*, 365 U.S. 708 (1961); *Douglas* v. *California*, 372 U.S. 353 (1963); *Anders* v. *California*, 386 U.S. 738 (1967); *Roberts* v. *La Vallee*, 389 U.S. 40 (1967); *Williams* v. *Illinois*, 399 U.S. 235 (1970); *Southern Alameda Spanish Speaking Organization* v. *Union City*, 424 F. 2d 291 (9th Cir. 1970). *Cf.* Mr. Justice White, concurring in *Griswold* v. *Connecticut*, 381 U.S. 479, 503 (1965).

[88] Indicating the heightened levels of consciousness of recent years is the suggestion that sex classifications also be regarded as suspect. See Comment, "Are Sex-Based Classifications Constitutionally Suspect?" 66 N.W. L. Rev. 481 (1971).

[89] 391 U.S. 68 (1968).

[90] 401 U.S. 532 (1971).

[91] Id. at 552, note 19. In more general terms, the Court has suggested that legislation which falls more harshly upon a class that exercises little control over the political process should receive "strict scrutiny". See, *e.g.*, *United States* v. *Carolene Products Co.*, 304 U.S. 144, 153 n. 4 (1938) where the Court noted that: "[P]rejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail operation of those political processes ordinarily to be relied upon to protect minorities, and, which may call for a correspondingly more searching judicial inquiry (citations omitted)." See also, *Hobson* v. *Hansen*, 269 F. Supp. 401, 507, 508 (D.D.C. 1967), *aff'd. sub nom. Smuck* v. *Hobson*, 408 F. 2d 175 (D.C. Cir. 1969).

[92] See *Reynolds* v. *Sims*, 377 U.S. 533 (1964); *Carrington* v. *Rash*, 380 U.S. 89 (1965).

[93] See *Skinner* v. *Oklahoma*, 316 U.S. 535 (1942).

[94] See *Shapiro* v. *Thompson*, 394 U.S. 618 (1969).

[95] See *Griswold* v. *Connecticut*, 381 U.S. 479 (1965); *Loving* v. *Virginia*, 388 U.S. 1, 12 (1967).

[96] See *Williams* v. *Rhodes*, 393 U.S. 23 (1968).

[97] See *Truax* v. *Raich*, 239 U.S. 33, 41 (1915). See also *Sail'er Inn Inc.* v. *Kirby*, 5 Cal. 3d 1, 485 P. 2d 529, 59 Cal Rept. 329 (1971).

[98] See *Ordway* v. *Hargraves*, 323 F. Supp. 1155 (D. Mass. 1971); *Hosier* v. *Evans*, 314 F. Supp. 316 (D. Virg. Is. 1970). *Cf. Hobson* v. *Hansen*, 269 F. Supp. 401, 508 (D.D.C. 1967). *Contra Johnson* v *New York State Education Department*, 449 F 2d 871 (2d Cir. 1971). It also has been suggested that in certain circumstances particular types of municipal services might be regarded as fundamental rights. See Comment, "Equal Protection in the Urban Environment: The Right to Equal Municipal Services", 46 Tul. L. Rev. 496, 516, 525 (1972).

[99] Many of the cases involve both a "suspect" classification and a "fundamental interest" which interact with each other. The Court's analysis in such cases has been described as involving a "sliding scale". "Under the 'sliding scale' approach, various classifications and interests are visualized as being on a gradient, with the standard of review becoming more demanding as the nature of the classifications or the value of the interests approaches the 'suspect' or 'fundamental' levels. The suspect and fundamental qualities of the classification created and the interests regulated by a specific state action are evaluated and weighted together in determining the standard of judicial review to be applied." Note, "The Equal Protection Clause and Exclusionary Zoning After *Valtierra* and *Dandridge*," 81 Yale L. J. 61, 71–72 (1971). See also "Developments in the Law: Equal Protection", 82 Harv. L. Rev. 1065, 1020-21 (1969); Comment, "Equal Protection in the Urban Environment: The Right to Equal Municipal Services", 46 Tul L. Rev. 496, 525 (1972).

> "Application of the new equal protection doctrine involves close "judicial scrutiny" imposing upon the state a heavy burden of justification. Concomitantly, the Court has sometimes considered whether there are alternatives available to the state by which it can achieve its legitimate objective, the state may not employ a method which, though rationally related to that objective, more substantially infringes upon protected rights (footnotes omitted).[101]

In the school finance cases, the courts have considered the "suspect" classification, "fundamental interests" categorizations and have employed the "rational basis", "compelling state interest" tests. We now turn to a consideration of those cases.

B. *The Initial Cases*

Attacks on State school financing schemes proved unsuccessful in *McInnis* v. *Shapiro*[102] and *Burrus* v. *Wilkerson.*[103]

McInnis was a suit brought by students attending school in school districts within Cook County. They attacked on Fourteenth Amendment grounds various state statutes dealing with school financing. They argued that the statutes permitted wide variations in the expenditures per student from district to district, thereby providing some students with a good education and depriving others, who have equal or greater educational needs.

Per pupil expenditures in Illinois varied between $480 and $1,000. The State guaranteed a foundation level of $400. The State contribution was made up of a flat grant for each pupil and an equalization grant awarded to each district which levied a minimum property tax. Where the local tax revenue per pupil generated by the minimum rate, plus the flat grant, was less than $400, the State provided the difference as an equalization grant. Districts taxing above the minimum rate were not penalized by having the additional revenue considered before determination of the equalization rate. Thus, all districts, regardless of their wealth, received a flat grant. The equalization formula helped bring poorer districts up to the $400 minimum level but did not close the gap between rich and poor districts that resulted from the same tax rate being able to produce vastly greater income in the rich districts. In fact, the court found that districts with lower property valuations usually levy higher rates.

A three-judge court found that the Illinois school financing scheme was designed "to allow individual localities to determine their own tax burdens according to the importance which they place on public schools."[104] The court, relying on those Supreme Court cases which shield State legislative enactments from invalidation unless they are "wholly irrelevant to the achievements of the State's objective", upheld the Illinois system.[105]

A more careful analysis, however would have revealed that the State's objective is furthered by the method of financing schools in Illinois. The tax burdens of individual localities do not directly reflect interest in education. As the court notes, "[t]hough districts with lower tax property valuations usually levy higher taxes, there is a limit to the amount of money which they can raise especially since they are limited by maximum indebtedness and tax rates."[106] Thus, tax burdens are controlled by property valuations and state imposed limitations on tax rates. A rich district can tax at a low rate and raise adequate funds to finance its schools. A poor district must impose a burdensome tax rate to obtain sufficient funds and, even then, it is limited by restraints imposed on its tax rate and indebtedness. Accordingly, the court might just as well have concluded that the manner in which school funds are distributed in Illinois is "wholly irrelevant to the achievement of the State's objective" of allowing "individual localities to determine their own tax burden according to the importance which they place upon public schools".

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[100] See Mr. Justice Harlan's criticism of the "compelling interest" doctrine in *Shapiro* v. *Thompson*, 394 U.S. 618, 658–63 (1969).

[101] See Comment, "*James* v. *Valtierra*: Housing Discrimination by Referendum?", 39 Univ. of Chic. L. Rev. 115, 120 (1971).

[102] 293 F. Supp. 327 (N.D. Ill. 1968), *aff'd. mem. sub. nom. McInnis* v. *Ogilvie,* 394 U.S. 322 (1969).

[103] 310 F. Supp. 572 (W.D. Va. 1969), *aff'd. mem.* 397 U.S. 44 (1970).

[104] *McInnis* v. *Shapiro op. cit. supra* note at 333.

[105] *Id.* at 332, quoting from *McGowan* v. *Maryland*, 366 U.S. 420, 425–26 (1961). The plaintiffs had urged that the importance of education required that the court more closely scrutinize the State regulatory scheme than is normally done when State statutes in other areas are attacked. *McInnis* v. *Shapiro, supra* at 331.

[106] *Id.* at 331.

But the court's opinion does not dwell extensively on the mechanics of the Illinois financing scheme. More attention is paid to the remedy sought by the plaintiffs. The court notes that the plaintiffs' original complaint sought an order requiring the "defendants to submit * * * a plan to raise and apportion all monies * * * in such a manner that such funds available to the school districts wherein the class of plaintiffs attend school will * * * assure that plaintiff children receive the same educational opportunity as the children in any other district * * *.[107] Similarly, the court observed:

"While the complaining students repeatedly emphasize the importance of pupils' 'educational needs,' they do not offer a definition of this nebulous concept. Presumably, 'educational need' is a conclusory term, reflecting the interaction of several factors such as the quality of teachers, the students' potential, prior education, environmental and parental upbringing, and the school's physical plant. Evaluation of these variables necessarily requires detailed research and study, with concomitant decentralization so each school and pupil may be individually evaluated." [108]

Obviously, the court regarded the nature of the relief requested as an insurmountable obstacle. This is reflected in the court's reasons for dismissing the case: (1) the Fourteenth Amendment does not require that public school expenditures be made only on the basis of pupils' educational needs, and (2) the lack of judicially manageable standards make the controversy nonjusticiable.[109]

The District Court's decision was appealed directly to the Supreme Court,[110] and its judgment was affirmed on March 24, 1969.[111]

The *Burrus* case atacked Virginia's scheme for the distribution of funds for public education. The plaintiffs, resident parents and school children of Bath County, claimed that their rights to equal protection were violated by the system of finance. They further alleged that they were denied "educational opportunities substantially equal to those enjoyed by children atending public schools in many other districts of the State," [112] that the State law failed to take into account "the variety of educational needs" [113] of the different counties and cities and that the law failed to make provision for variations in expenses for public education from district to district.[114]

The court rejected the plaintiffs' argument. If found that the differences existing among districts were not caused by the State, and the cities and counties were receiving funds under a "uniform and consistent plan".[115] What was involved the court suggested, was a local problem. "Truth is", said the court "the inequalities suffered by the school children of Bath are due to the inability of the county to obtain locally, the money needed to be added to the State contribution to raise the educational provision to the level of that of the other counties or cities." [116] This, the court concluded, did not involve discrimination by the State. The court also rested its conclusion on the indefiniteness of the relief sought by the plaintiffs and rejected the suggestion that a court could fashion a remedy based on educational needs. The court said:

"Actually, the plaintiffs seek to obtain allocations of State funds among the cities and counties so that pupils in each of them will enjoy the same educational opportunities. This certainly is a worthy aim, commendable beyond measure. However, the courts have neither the knowledge, nor the means, nor the power to tailor public moneys to fit the varying needs of these students throughout the State." [117]

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[107] *Id.* at 335 n. 34. See also Coons, Clune and Sugarman, "Educational Opportunity: A Workable Constitutional Test for State Financial Structures", 57 Cal. L. Rev. 305, 339-40 (1969) which notes that in *McInnis* v. *Ogilvie*, before the Supreme Court it was argued that the Illinois financing scheme denied equal protection in the following respects: (a) . . . classifications upon which students will receive the benefits of a certain level of per pupil educational expenditures are not related to the educational neds of these students and are therefore arbitrary, capricious and unreasonable; (b) . . . the method of financing public education fails to consider . . . (ii) the added costs necessaray to educate those children from culturally and economically deprived areas (iii) the variety of educational needs of the several public school districts of the State of Illinois . . . (c) . . . the method of financing public education fails to provide to each child an equal opportunity for an education . . ."

[108] *McInnis* v. *Shapiro, op. cit. supra* note at 329 n. 4.

[109] *Id.* at 329.

[110] Since the *McInnis* case attacked the constitutionality of state legislation, it was heard by a three-judge federal court. 28 U.S.C. §§ 2281, 2284. The Supreme Court is required to rule on appeals from the decisions of such courts. 28 U.S.C. 1253.

[111] 394 U.S. 322 (1969). For a discussion of the significance of the Supreme Court affirmance, see Coons, Clune and Sugarman *op. cit. supra* note at 308-309, 344.

[112] *Burruss* v. *Wilkerson*, 310 F. Supp. 572, 573 (W.D. Va. 1968).

[113] *Ibid.*

[114] *Ibid.*

[115] *Id.* at 574.

[116] *Ibid.*

The court relied on the *McInnis* case which is found "scarcely distinguishable" from the case before it.[118] This decision also was affirmed by the Supreme Court.[119]

The courts were more receptive to an attack on a school finance system in *Hargrave v. McKinney.*[120] This case involved Florida's school financing methods. At issue was a Florida statute which provided that any county that imposes upon itself more than a ten mil ad valorem property tax for educational purposes would not be eligible to receive State funds for the support of its public education system. The statute was attacked as violating the equal protection clause ". . . because the state limitations is fixed by reference to a standard which relates solely to the amount of property in the county, not to the educational needs of the county. Counties with high property values in relation to their school population are authorized by the state to tax themselves far more in relation to their educational needs than counties with low property values in relation to their school population.[121]

The United States Court of Appeals for the Fifth Circuit ruled that the district court had improperly dismissed the case and that the constitutional quesions raised were sufficiently substantial to warrant the convening of a three-judge district court. The court noted the "novelty of the constitutional argument" [122] advanced by the plaintiff but concluded that it merited further consideration by a three-judge court. The court said:

"The equal protection argument advanced by plaintiffs is the crux of the case. Noting that lines drawn on wealth are suspect [citing *McDonald v. Board of Election*, 394 U. S. 802 (1969); *Harper v. Virginia Board of Elections*, 383 U. S. 663 (1966); *Douglas v. California*, 372 U. S. 353 (1963); *Griffin v. Illinois*, 351 U. S. 12 (1956)] and that we are dealing with interests which may well be deemed fundamental, [citing *Brown v. Board of Education*, 347 U. S. 483 (1954); *Hobson v. Hansen*, 269 F. Supp. 401 (D.D.C. 1967)] we cannot say that there is no reasonably arguable theory of equal protection which would support a decision in favor of the plaintiffs." [123]

On remand, the three-judge Federal court concluded that there was no rational basis for the Florida statute.[124] It noted that the statute had resulted in a reduction of over $50,000,000 in local taxes for educational purposes in 24 counties that had reduced their millage to the 10 mill limit in the 1968–69 school year. The effect of the Florida statute was to tell a county that it could not raise its taxes to improve education even if that is what the voters wanted. The State contended, however, that "the difference in dollars available does not necessarily produce a difference in the quality of education." The court labeled this contention "unreal" and noted the disparity created when Charlotte County, using the 10 mill limit may raise $725 per pupil while Bradford County, using the same limit, only could raise $52. The court said: "What apparently is arcane to the defendants is lucid to us—that the Act prevents poor counties from providing *from their own taxes* the same support for public education which the wealthy counties are able to provide." [emphasis in original] [125]

The court concluded that this distinction did not have a rationale basis and could not withstand attack under the Fourteenth Amendment. "We have searched in vain", said the court, "for some legitimate state end for the discriminatory treatment imposed by the Act." [126] Since the court struck down the Florida statute for failing to be based on rational distinctions, it concluded that it did not have to consider whether education was "a basic fundamental right" which could be impinged upon—even for rational reasons—only if there were some "compelling state interest".[127]

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[117] *Ibid.*

[118] *Ibid.* Cf. *Shepheard v. Godwin*, 280 F. Supp. 869 (E.D. Va. 1968) where a three-judge court held that a Virginia statute which provided that children of members of the armed forces, or other employees of the United States, living in an impacted area or on or off Federal property, would not be counted for the purpose of distributing state educational aid to school districts violated the equal protection clause.

[119] 397 U.S. 44 (1970).

[120] 413 F. 2d 320 (5th Cir. 1969), on remand, *Hargrave v. Kirk*, 313 F. Supp. 944 (M.D. Fla. 1970), *vacated sub noh. Askew v. Hargrave*, 401 U. S. 476 (1971).

[121] *Hargrave v. McKinney, op. cit. supra* note 18 at 323. The complaint cited as an example the fact that the statute under attack permitted Charlotte County to raise by its own taxes $725 per student while Bradford County is permitted to raise only $52 per student.

[122] *Id.* at 344.

[123] *Ibid.*

[124] *Hargrave v. Kirk*, 313 F. Supp. 944, 948 (M.D. Fla. 1970).

[125] *Id.* at 947.

[126] *Id.* at 948.

[127] *Ibid.*

The court recognized the relevance of the *McInnis* and *Burruss* cases but distinguished them because here the local boards were restricted in determining the extent of their tax burden for education while in the aforementioned cases this power was delegated to school districts. The court also noted that the relief requested in *McInnis* required an affirmative calculation of needs while "In contrast, in the instant case, the plaintiffs' argument simply stated is that the Equal Protection Clause *forbids* a state from allocating authority to tax by reference to a formula based on wealth. Unlike the broad relief sought in *McInnis*, the remedy here is simple—an injunction against state officials . . ."[128]

C. *Serrano* v. *Priest*

On August 30, 1971, the Supreme Court of California decided *Serrano* v. *Priest*,[129] a decision that is certain to become a landmark school finance case. The California court characterized its decision as furthering "the cherished ideas of American education that in a democratic society free public schools shall make available to all children equally the abundant gifts of earning."[130] The court summarized its holding in these words:

"We are called upon to determine whether the California public school financing system, with its substantial dependence on local property taxes and resultant wide disparities in school revenues, violates the equal protection clause of the Fourteenth Amendment. We have determined that the funding scheme invidiously discriminates against the poor because it makes the quality of a child's education a function of the wealth of his parents and neighbors. Recognizing as we must that the right to an education in our public schools is a fundamental interest which cannot be conditioned on wealth, we can discern no compelling state purpose necessitating the present method of financing. We have concluded, therefore, that such a system cannot withstand constitutional challenge and must fall before the equal protection clause."[131]

1. *The California school financing scheme*

The *Serrano* suit was brought by Los Angeles County school children and their parents. The children claimed that the state financing scheme created substantial disparities in the quality and extent of educational opportunities offered throughout the State. The parents claimed that as a result of the financing method they are required to pay a higher rate than taxpayers in other districts in order to obtain the same or lesser educational opportunities for their children. It was contended that this discrimination violated the equal protection clause on several grounds.[132]

In California, over 90 percent of school funds come from two sources: local district taxes on real property (55.7%) and the State School Fund (35.5%). The amount of local taxes a district can raise depends upon its tax base—*i.e.*, the assessed valuation of property within its borders—and the rate of taxation within the district. In 1969–70, for example, the assessed valuation per pupil ranged from a low of $103 to a high of $952,156. Districts have great leeway in setting tax rates.

State aid is distributed under a foundation program similar to the one in Illinois, described in the *McInnis* case.[133] The California program assures that each district will receive annually, from state or local funds, $355 for each elementary school pupil and $488 for each high school pupil. Every district receives "basic state aid" of $125 per pupil, regardless of the relative wealth of the district. "Equalization aid" is provided to a district if its local tax levy—computed at a hypothetical tax rate—plus its basic grant is less than the foundation minimum. Equalization aid guarantees to poorer districts a basic minimum revenue, while wealthier districts are ineligible for such assistance.

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[128] *Id.* at 949.

[129] 5 Cal. 3d 584, 96 Cal. Rptr. 601, 487 Pac. 2d 1241 (1971).

[130] 5 Cal. 3d at 618.

[131] *Id.* at 589.

[132] Among the equal protection violations claimed were the following: (a) quality of education is a function of wealth of parents and neighbors as measured by tax bases; (b) quality of education is a function of geography; (c) failure to take into account varied educational needs; (d) children in some circumstances not provided with equal educational resources; (e) use of "school district" as a unit of differential allocation of funds is not reasonably related to legislative purpose to provide equal educational opportunities; (f) "A disproportionate number of school children who are black children, children with Spanish surnames, children belonging to other minority groups reside in school districts in which a relatively inferior educational opportunity is provided." *Id.* at 590 n. 1.

[133] See text accompanying note *supra*.

Despite State aid, wide differentials remain among districts. For example, in the 1968–69 school year, the Baldwin Park Unified School District, with assessed valuation per child of $3,706, spent $577.49 per pupil; the Pasadena School District—assessed valuation per child of $13,706—spent $840.19 and the Beverly Hills School District—assessed valuation $50,885—spent $1,231.72 per child.

Basic state aid, which is distributed on a uniform per pupil basis to all schools irrespective of wealth, widens the gap between rich and poor districts. Beverly Hills as well as Baldwin Park, receives $125 from the State for each of its students.

2. *The Fourteenth Amendment Violation*

In testing the California school finance structure against the equal protection clause, the California court said it would follow the two-level test used by the Supreme Court. Economic regulations have been presumed constitutional; all that is required is that the distinctions drawn by a challenged statute bear some rational relationship to a conceivable legitimate State purpose. But in cases involving "suspect classifications" or touching on "fundamental interests", legislative classifications are subject to a strict scrutiny. In this area, the State has the burden to show that it has a compelling interest which justifies the law and that the distinctions drawn by the law are necessary to further its purpose.

a. *Wealth as a suspect classification.*—Applying this test, the California court first considered whether it was appropriate to regard wealth as a "suspect classification." It answered affirmatively,[134] relying principally on the Supreme Court decisions in *Harper* v. *Virginia* [135] and *McDonald* v. *Board of Election.*[136] The California court found it "irrefutable" that the state financing system classifies on the basis of wealth. The court conceded that the amount of money raised locally is also a function of the tax rate and, consequently, poor districts could attempt to equalize disparities in tax basis by taxing at higher rates. Practically, however, poor districts never could levy at a rate sufficient to compete with more affluent districts. For example, Baldwin Park citizens, who paid a school tax of $5.48 per $100 of assessed valuation in 1968–69, were able to spend less than half as much on education as Beverly Hills residents, who were taxed only $2.38 per $100. "Thus," the California court said, "affluent districts can have their cake and eat it too: they can provide a high quality education for their children while paying lower taxes. Poor districts, by contrast, have no cake at all." [137]

The court rejected the defendants' argument that classification by wealth is constitutional so long as the wealth is that of the district, not the individual. The court said: "We think that discrimination on the basis of district wealth is equally invalid. The commercial and industrial property which augments a district's tax base is distributed unevenly throughout the state. To allot more educational dollars to the children of one district than to those of another merely because of the fortuitous presence of such property is to make the quality of a child's education dependent upon the location of private commercial and industrial establishments. [footnote omitted] Surely, this is to rely on the most irrelevant of factors as the basis for educational financing.[138]

The defendants also argued that different levels of educational expenditure do not affect the quality of education. The plaintiff's complaint, however, alleged that expenditures *did* affect the quality of education. Because of the procedural posture of the case, the California Supreme Court accepted the plaintiff's allegation as true.[139]

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[134] *Serrano* v. *Priest op. cit. supra* note at 598.
[135] 383 U.S. 663, 668 (1966).
[136] 394 U.S. 802, 807 (1969).
[137] *Serrano* v. *Priest, op. cit. supra* note at 600.
[138] *Id.* at 601.

Finally, the defendants argued that whatever discrimination might exist in California was de facto discrimination *i.e.*, it resulted from factors over which the State had no control or responsibility. The court, summarily rejecting this contention, noted that ". . . we find the case unusual in the extent to which governmental action *is* the cause of the wealth classifications." [140] The court cited with approval this description of State involvement in school financing inequalities:

> [The states] have determined that there will be public education, collectively financed out of general taxes; they have determined that the collective financing will not rest mainly on a state-wide tax base, but will be largely decentralized to districts; they have composed the district boundaries, thereby determining wealth distribution among districts; in so doing, they have not only sorted education-consuming households into groups of widely varying average wealth, but they have sorted non-school-using taxpayers-households and others-quite unequally among districts; and they have made education compulsory.[141]

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[139] *Id.* at 591, 601 n. 16. The court noted that there is considerable controversy among educators over the relative impact of educational spending and environmental influences on school achievement. For an excellent summary of the studies on this question, see Schoettle, *op. cit. supra* note at 1378–1388. The court also noted that other courts had considered contentions similar to the defendants and has rejected them. *Serrano* v. *Priest*, *op. cit. supra* note at 601 n. 16. In addition to the cases and authorities cited by the court, see *Van Dusartz* v. *Hatfield*, 334 F. Supp. 870, 874 (D. Minn. 1971); *Robinson* v. *Cahill*, No. L–18704—69, pp. 37–39 (Super Ct. N. J. 1971); Coleman, "A Brief Summary of the Coleman Report", *Equal Educational Opportunity* 253, 259 (1969); Coons, Clune and Sugarman, *Private Wealth and Public Education* 25–33 (1970); Bowles, "Towards Equality of Educational Opportunity", *Equal Educational Opportunity* 115 (1969); Testimony of David Selden, *Equal Educational Opportunity Hearings* pt. 16B, at 6727; Advisory Committee on Intergovernmental Relations, *State Aid to Local Government* 44 (1969). A recent study by a group of researchers at Harvard University headed by Frederick Mosteller and Daniel P. Moynihan reaffirms the central findings of the Office of Education's 1966 report, *Equality of Educational Opportunity*—known as the *Coleman Report*—that academic achievement depends more on family background than what happens in the classroom. Washington Post, March 12, 1972 § A, at 1, col. 5. "The new study suggests that the best way to deal with the educational problems of poor children—black and white—may thus be to improve the jobs and incomes of their families. Neither racial integration nor increased spending on schools has much effect, the report concludes, on the educational performance of lower-class children—or on that of any others." *Ibid.* Christopher Jencks, one of the authors of the report, contends that "the least promising approach to raising achievement is to raise expenditures, since the date gives little evidence that any widely used school policy or resource has an appreciable effect on achievement scores." *Id.* at 14, col. 2. *Cf. Bradley* v. *The School Board of the City of Richmond*, C. A. No. 3353 (E. D. Vir. 1972) where the court found that schools attended by a disproportionate number of black students are perceived as inferior by the pupils attending them. *Id.* at 23. The court also cited evidence that "self-perception is affected by a pupil's notion of how he is being dealt with by the persons in power" (*Id.* at 282) and that "teachers' conceptions of the schools in which they hold classes are affected by the racial and *economic* status of their schools. There is a 'much stronger tendency toward a negative view of school and students in the mostly black and *depressed* schools than in the mostly white and *advantaged* schools.'" (emphasis added) *Id.* at 283. Perhaps this suggests that students who attend physically inferior schools develop unfavorable self-perceptions and that teachers who teach in such schools have low expectations of their students. See also Berke and Kelly, "The Financial Aspects of Equality of Educational Opportunity" *op. cit. supra* note at 39. ". . . we are firmly convinced that while money alone will not solve the crisis in educational quality lessening the resources available to educators is even less effective in improving education. In short, while more money by itself is not the sole answer to improving education available to all Americans, it seems to be far more effective than whatever factor may be considered second best. For money buys smaller classes, improved teaching devices, experimentation, new schools to achieve integration, counseling services or near-clinical personnel usage, or whatever other techniques research, development and practice find to be most promising.

But even aside from the question of educational effectiveness, we have little patience with those who ask us to prove, as a condition precedent to reform, that achieving greater equity in the raising and the distribution of revenues will result in improved performance in the schools. For the end result of throwing roadblocks in the way of change is to support the maintenance of the system of educational finance we have described in this report, a system which regularly provides the most lavish educational services to those who have the highest incomes, live in the wealthiest communities, and are of majority ethnic status. In our eyes, this situation is the very definition of inequality of educational opportunity. For a Nation which has aspirations toward achieving an educated, humane, prosperous, and democratic society, reversing that inequitable pattern of educational resource distribution must be at least as high an educational priority as the development of new and more effective ways to help all children to learn."

[140] *Serrano* v. *Priest*, *op. cit. supra* note at 603.

[141] *Id.* at 603 n. 19, quoting from Michelman, "The Supreme Court, 1968 Term, Foreword: On Protecting the Poor Through the Fourteenth Amendment", 83 Harv. L. Rev. 7, 50 48 (1969). For a further discussion of the responsibility of the state toward public education see, 1 U. S. Commission on Civil Rights, *Racial Isolation in the Public Schools* 260–261 (1967); Kirp, *op cit. supra* note at 1964–65; Silard and White, *op. cit. supra* note at 8–9; *Robinson* v. *Cahill*, *op. cit. supra* note at 67; *Reynolds* v. *Sims*, 377 U. S. 533, 575 (1964), *Cooper* v. *Aaron*, 358 U S. 1, 16–17 (1958); *Bradley* v. *The School Board of the City of Richmond, Virginia*, C. A. No. 3353 (E. D. Vir. 1972).

b. *Education as a fundamental interest.*—The California court held that not only was the discrimination in this case related to a "suspect classification", *i.e.*, wealth, but it also encroached upon a "fundamental interest" *i.e.*, education. The court recognized that there was no direct authority supporting the arugment that education is a fundamental interest which may not be conditioned on wealth, although there are suggestions to that effect in some court opinions.[142] Education, however, plays an indispensable role in the modern industrial state since

> . . . first, education is a major determinant of an individual's chances for economic and social success in our competitive society; second, education is a unique influence on a child's development as a citizen and his participation in political and community life . . . education is the lifeline of both the individual and society.[143]

In many respects, the court found, education may have greater social significance and a more far ranging impact than the rights of defendants in criminal cases and the right to vote—two "fundamental interests" which the Supreme Court already has protected against discrimination based on wealth.[144] "We are convinced", the court concluded, "that the distinctive and priceless function of education in our society warrants, indeed compels, our treating it as a 'fundamental interest'." [145]

c. *The absence of a compelling State interest.*—The State argued that despite the discriminations involved in the California school financing system, the structure was necessary to achieve a compelling State interest, *i.e.*, "to strengthen and encourage local responsibility for control of public education." [146] The court disagreed. First, no matter how public education is financed, it still would be possible to leave decision-making over school policy in the hands of local districts.[147] Second, local fiscal control is an illusion when, as in California, the assessed valuation within a district's boundaries is a major determinant of how much it can spend on schools; in fact, the system deprives less wealthy districts of local fiscal control.[148] Accordingly, the court concluded:

> We find that such financing as presently constituted is not necessary to the attainment of any compelling state interest. Since it does not withstand the requisite "strict scrutiny," it denies to the plaintiffs and others similarly situated the equal protection of the laws.[149]

Nor did the court agree that its holding was barred by the Supreme Court's summary affirmances in the *McInnis* and *Burruss* cases.[150] The court extensively analyžed those cases and distinguished them largely on the grounds that in *Serrano* the court was being asked to invalidate discrimination on the basis of wealth while in *McInnis* and Burruss "plaintiffs repeatedly emphasized 'educational needs' as the proper standard for measuring school financing against the equal protection clause." [151]

D. *Other Recent Cases*

1. Minnesota's system of financing public education—structurally indistinguishable from the California system—was challenged in *Van Dusartz v. Hatfield.*[152] The court, resting squarely on *Serrano*, reached a similar conclusion. Describing the financing system in Minnesota, the court said:

> To sum up the basic structure, the rich districts may and do enjoy lower tax rates and higher spending. A district with $20,000 assessed valuation per pupil and a 40 mill tax rate on local property would be able to spend $941 per pupil; to match that level of spending the district with $5,000 taxable wealth would have to tax itself at more than three times that rate, or 127.4 mills.[153]

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[142] *Serrano v. Priest, op. cit. supra* note at 604 n. 22.

[143] *Id.* at 605.

[144] The court elaborates on this proposition. *Id.* at 607–609.

[145] *Id.* at 608-609. For further discussion of education as a "fundamental interest" see, *e.g.*, Kirp *op. cit. supra* note at 140; *Hobson v. Hansen* 269 F. Supp. 401 508 (D.D.C. 1967).

[146] *Serrano v. Priest, op. cit. supra* note at 610.

[147] *Ibid.*

[148] *Id.* at 611.

[149] *Id.* at 614–615. The court also rejected the State's contention that the Constitution did not require territorial uniformity of State programs and that if wealth could not determine the quality of public education, the same rule must be applied to all tax-supported public services. *Id.* at 611–614.

[150] See discussion of *McInnis* and *Burruss, supra.*

[151] *Serrano v. Priest, op. cit. supra* note at 617.

[152] 334 F. Supp. 870 (D. Minn. 1971).

[153] *Id.* at 873.

The court recognized that there were differences of opinion among educators over the degree to which money counts but quoted from an affidavit submitted by the plaintiffs that concluded that in Minnesota:

> The districts having the lowest per pupil expenditure, which are generally the poorest districts in terms of assessed valuation per-pupil unit, offer an education that is inferior to the districts having the highest per-pupil expenditures.[154]

The court's analysis of the constitutional questions presented to it proceeded along the same lines as that in *Serrano:* is a "fundamental interest" involved? has the state used a "suspect classification"? is there a "compelling state interest"? The court observed:

> . . . education . . . is to be sharply distinguished from most other benefits and services, provided by government. It is not the "importance" of an asserted interest which alone renders it specially protected. . . . Education has a unique impact on the mind, personality, and future role of the individual child. It is basic to the functioning of a free society and thereby evokes special judicial solicitude.[155]

This "fundamental interest," the court concluded is invidiously affected by a wealth classification and:

> . . . the objection to classification by wealth is in this case aggravated by the fact that the variations in wealth are State created. This is not the simple instance in which a poor man is injured by his lack of funds. Here the poverty is that of a governmental unit that the State itself has defined and commissioned. The heaviest burdens of this system surely fall *de facto* upon those families residing in poor districts who cannot escape to private schools, but this effect only magnifies the odiousness of the explicit discrimination by the law itself against all children living in relatively poor districts.[156]

Since this discrimination was not compelled by any state interest of sufficient magnitude, it was invalid under the Fourteenth Amendment. This did not mean, said the court, that the only valid system was one involving uniformity of expenditure for each pupil in Minnesota. All that fiscal neutrality requires is that educational benefits not be distributed according to wealth; the state may adopt one of many optional funding systems which do not violate the equal protection clause.[157]

2. In Texas, a three-judge Federal court, in *Rodriguez* v. *San Antonio Independent School District*,[158] relied on *Serrano* in finding that Texas' method of financing public elementary and secondary education violated the equal protection clause. The analysis in this Report focused on the manner in which the Texas school financing system discriminates against Mexican Americans.[159] Although the complaint in the *Rodriguez* case, in addition to alleging that the Texas school finance system discriminated on the basis of wealth, also alleged that it discriminated against Mexican Americans[160]—and all the plaintiffs in the case were Mexican Americans—the court's decision rests solely on wealth discrimination. In Texas, there happens to be a close correlation between financial discrimination and ethnic and racial discrimination. A study of the Texas finance system submitted in evidence in the *Rodriguez* case concluded that:

> Racial discrimination is also readily apparent in Texas educational finance. There is a consistent pattern of higher quality education in districts with higher proportions of whites, and lower quality education in districts with lower proportions of whites. In short, the more Negroes and Mexican Americans in the school population of a district, the lower its revenues for education.[161]

Perhaps Texas is unique in this respect.[162] For this reason, the *Rodriguez* court may well have decided to base its decision on wealth discrimination because that was a more universally existing problem, because it could find support in the *Serrano* and *Van Dusartz* decisions and because some commentators have cautioned against basing the school finance cases on racial and ethnic discrimination.[163]

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[154] *Id.* at 874.
[155] *Id.* at 875.
[156] *Id.* at 875–77.
[157] *Id.* at 876–77.
[158] C. A. No. 68–175–SA (W.D. Tex. 1971).
[159] See Findings, *supra* pp.
[160] See Appendix F *infra*.
[161] See affidavit of Joel S. Berke, p. 4.
[162] See discussion accompanying text at notes *supra*.

The court, in *Rodriguez*, notes these financial disparities. A survey of 110 school districts throughout the State showed that while the ten districts with a market value of taxable property per pupil above $100,000 enjoyed an equalized tax rate per $100 of only $.31, the poorest four districts, with less than $10,000 in property per pupil, were burdened with a rate of $.70.[164] The rich low-rate districts, however, raised $585 per pupil while the poor high-rate districts collected only $60 per pupil.[165] The seven San Antonio school districts followed a similar pattern. Market value per student varied from a low of $5,429 in Edgewood to a high of $45,095 in Alamo Heights. Taxes, as a percent of the property's market value, were the highest in Edgewood and the lowest in Alamo Heights. Yet Edgewood produced only $21 per pupil while Alamo Heights garnered $307 per pupil.[166]

The court, employing the same constitutional analysis as that followed in *Serrano* and *Van Dusartz*, invalidated the Texas system.[167] Disagreeing with the defendants that the plaintiffs were calling for "socialized education", the court said: "Education like the postal service has been socialized, or publicly financed and operated, almost from its origin. The *type* of socialized education, not the question of its existence, is the only matter currently in dispute." [168] The court also rejected the defendant's argument that Federal assistance had an equalizing effect. Factually, this was not so but, more importantly, [p]erformance of its constitutional obligations must be judged by the State's own behavior, not by the actions of the Federal government." [169] The court ordered Texas to develop a new educational financing system and gave it two years to do so.[170]

3. New Jersey's school finance system was challenged in *Robinson* v. *Cahill*.[171] In a lengthy opinion, the court analyzed the school finance scheme in effect at the time the complaint was filed as well as the "State School Incentive Equalization Aid Law" (known as the Bateman Act) enacted October 26, 1970 and effective July 1, 1971. The later law was the product of extensive study and was intended to provide an equitable system of State financing.[172] The court, however, employing the *Serrano* analyses, concluded that:

> The present system of financing public elementary and secondary schools in New Jersey violates the requirements for equality contained in the State and Federal constitutions. The system discriminates against pupils in districts with low real property wealth, and it discriminates against taxpayers by imposing unequal burdens for a common State purpose.[173]

The New Jersey's courts opinion is too intricate for thorough analysis here. Some of its highlights, however, merit note.

The court found a consistent pattern of financing throughout the State:

> In most cases, rich districts spend more money per pupil than poor districts; rich districts spend more money on teachers' salaries per pupil; rich districts have more teachers and more professional staff per pupil; and rich districts manage this with tax rates that are lower than poor districts, despite "equalizing" aid.[174]

For example, Newark, had a school tax rate of $3.69 as compared with the $1.43 rate in Millburn. Yet Millburn has more teachers per pupil, spends more for teachers' salaries per pupil ($685 to $454) and has more professional staff per pupil (61 to 53).[175]

Valuable commercial and industrial property was unequally distributed throughout the State. 112 municipalities with 11 percent of the State's population had commercial and industrial property almost equal in value to that possessed by a group of municipalities containing 39 percent of the State's population. The first group raised only $62 million in taxes compared with $262 million by the second group. The first group raised these taxes at a tax rate under 2 percent while the poorer groups taxed at rates of 6 percent or more.[176] "Yet more of the poorer communities must serve people of greater need because they have large numbers of dependent minorities, that is, blacks and those whose origin is Puerto Rican or Cuban." [177] It is not, however, only the older, large cities that are penalized by the funding system; many poor suburbs and rural districts also suffer.[178]

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[163] Coons, Clune and Sugarman, *Private Wealth and Public Education* 356–58, 403–409 (1970).

[164] *Rodriguez* v. *San Antonio Independent School District*, *op. cit. supra* note at 2 (mem. op.).

[165] *Ibid.* At this point, the court noted that "Those districts most rich in property also have the highest median family income and the lowest percentage of minority pupils, while the poor property districts are poor in income and *predominantly minority* in composition."

[166] *Id.* at 3.

[167] *Id.* at pp. 3–6.

[168] *Id.* at 6.

[169] *Id.* at 7.

[170] *Id.* at 8–9.

[171] *Robinson* v. *Cahill*, No. L–18704–69 (Super. Ct. N. J. 1971).

[172] *Id.* at n. 4. Among other things, the formula in the Bateman Act provides greater minimum aid to districts with a high proportion of children receiving AFDC assistance.

[173] *Id.* at p. 75.

[174] *Id.* at 17–18.

[175] *Id.* at 20.

The court extensively analyzed the relationship between dollar expenditures and quality of education and concluded that "there is a correlation between dollar expenditures and input (such as teachers and facilities), and between input and output (results)." [179]

Although the court praised the improvements the Bateman Act made on the school financing system—such as giving special weight to the number of children in a district receiving aid to dependent children assistance—it noted that such factors as "municipal and county overload" still were not taken into account. Said the court:

> Poor districts have other competing needs for local revenue. The evidence shows that poorer districts spend a smaller proportion of their total revenues for school purposes. The demand for municipal services tends to diminish further the school revenue-raising power of poor districts. Another general disadvantage of poor districts is the fact that property taxes are regressive; they impose burdens in inverse proportion to ability to pay. This is because poor people spend a larger portion of their income for housing.[180]

The court's order permits the continued operation of the school system and existing tax laws and all actions taken under them. To allow time for legislative action, the court's order is not to be effective until January 1, 1974.[181]

The New Jersey opinion illustrates the varied factors that must be taken into account in order to develop an equitable school financing formula and the difficulty of developing such a formula even where a State makes a good faith effort to do so.

4. An Arizona court followed the *Serrano* trend in *Hollins* v. *Shofstall*.[182] The court found the *Serrano* and *Van Dusartz* rulings to be "highly persuasive" [183] but appeared to base its opinion on the discrimination suffered by taxpayers rather than by school children. The court found that the amount of money expended per student could be highly misleading [184] and also noted the various devices that were employed to equalize disparities among districts which conceivably could avoid an equal protection violation.[185] What was persuasive to the court was a comparison of "the amounts per pupil in average daily attendance raised by district taxation to pay for costs of operation and maintenance in different districts and the district tax rates necessary to raise such funds." [186] The court noted that in 1970–71 Morenci Elementary School District's taxes produced $249.64 per pupil in average daily attendance at a tax rate of $.67. Roosevelt Elementary School District taxed at a rate of $7.14 but produced only $99.04 per pupil. Thus, "[a]lthough Morenci's tax rate was only about one-tenth

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[176] *Id.* at 23.

[177] *Ibid.*

[178] *Id.* at 27.

[179] *Id.* at 30. The court cited testimony of Professor Henry S. Dyer of the Educational Testing Service of Princeton, New Jersey that pupil achievement is positively related to per pupil expenditure for instructional purposes. *Id.* at 37.

[180] *Id.* at 68.

[181] *Id.* at 75–76.

[182] No. C-253652 (Super. Ct. Maricopa Cty. 1971).

[183] Id. at 3 (mem. op.).

[184] The court refers to one of plaintiffs' exhibits which shows that Roosevelt Elementary School District spends $606.86 per pupil while the ten districts in the State which spend the most per pupil spend between $2,370.20 to $1,681.32. The court finds it erroneous to presume that the ten districts provide a superior quality of education "when it is considered that all ten are rural school districts with the highest average daily attendance being 75, the lowest 2, the median 12 and the average 22, while average daily attendance at Roosevelt for 1970–71 was 9,700. . . ." *Id.* at 4–5.

[185] ". . . the amounts a district receives from state financial assistance, state equalization aid and federal programs will influence the quality of its educational programs and the amount which must be raised by district taxation." *Id.* at 4. *Cf. Rodriguez* v. *San Antonio Independent School District op. cit. supra* note and text accompanying not where the court concludes that the extent of federal assistance is irrelevant to the state's obligation of equal treatment.

[186] *Hollins* v. *Shofstall*, *op. cit. supra note* at 5.

of Roosevelt's, it produced about two and one-half times more revenue per ADA child." [187]

The Arizona Superior Court concluded:

> . . . the funds available in any given school district for public education are to a highly significant extent a function of the taxable wealth within the district. Arizona's school financing system imposes grossly disparate tax burden on *taxpayers* in its different school districts. *Taxpayers* in a school district poor in taxable wealth are forced to make a substantially greater effort to provide substantially less monies for the operation of their schools in comparison with what is required of *taxpayers* in a district rich in taxable wealth. (*Emphasis added*) [188]

5. One aberration from the *Serrano* trend is the decision of the New York State Supreme Court in *Spano* v. *Board of Education of Lakeland Central School District #1*.[189] The court there concluded that it was bound by the *McInnis* and *Burruss* decisions [190] and took exception to the reasoning of the California court in *Serrano* in distinguishing those decisions.[191] In addition, the court feared that if it were to allow this case to go to trial,[192] it would "render a grievous, if not irreparable disservice to public school education." [193] The court's concern was based on assertions by counsel for the School District that as a result of the filing of this case the market for its school bonds, as well as those of other districts, was in turmoil.[194] Accordingly, the court dismissed the case and concluded:

> "One scholar, one Dollar"—a suggested variant of the "one man, one vote" doctrine proclaimed in *Baker* v. *Carr*, 369 U.S. 186—may well become the law of the land. I submit, however, that to do so is the prerogative and within the "territorial imperative" of the Legislature or, under certain circumstances, of the United States Supreme Court.[195]

E. *Pending Cases*

A list of the cases that have been filed to challenge school financing methods, prepared by the Lawyers' Committee for Civil Rights Under Law, is included here as appendix F.[196]

IV. WHITHER SERRANO?

The spate of recent school finance cases undoubtedly will present the United States Supreme Court with another opportunity to consider whether disparities in educational financing violate the equal protection clause of the Fourteenth Amendment. The three-judge court decision in the *Rodriguez* case is likely to be the first to reach the Supreme Court.[197] The Court might choose to summarily reverse *Rodriguez* and cite its decisions in *McInnis* and *Burruss* as authority. This could suggest that the Court regards the equal protection contentions in the school finance cases as so insubstantial as not to merit full review. On the other hand, it might indicate that despite the nature of the requested relief in the current cases, *i.e.*, a negative declaration against discrimination based on wealth rather than an affirmative order to provide educational resources on the basis of "needs," the Court—as probably was the case in *McInnis* and *Burruss*—continues to regard school finance cases as nonjusticiable because of the unmanageability of the requested relief.

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[187] *Ibid*

[188] *Id.* at 5–6. *Cf. Robinson* v. *Cahill*, *op. cit. supra* note where the court also found discrimination against taxpayers.

[189] No. 105–197 (Sup. Ct. Westchester Cty. 1972).

[190] See text accompanying notes *supra*.

[191] See text accompanying notes *supra*.

[192] As in *Serrano*, the legal posture of this case was *not* the merits of what the plaintiffs were contending but whether the situation described in the plaintiff's complaint, if true, would result in a legal remedy. A party moving to dismiss a complaint in effect accepts everything stated in the complaint as true but contends, nevertheless, that there is no violation of the law.

[193] *Op. cit. supra* note at 8 (mem. op.).

[194] *Ibid.*

[195] *Id.* at 10.

[196] In addition, Iowa's system of school financing was challenged in a suit filed on February 22, 1972. See *N.Y. Times*, February 27, 1972, p. 32, col. 3–4.

[197] Cases heard by three-judge courts proceed directly to the Supreme Court; jurisdiction in such cases is not discretionary. 28 U.S.C. 1253 (1964). Generally, in cases coming from federal courts of appeal and State courts the Supreme Court has discretion as whether or not to review the cases, 28 U.S.C. 1254, 1257 (1964).

It is difficult to view the equal protection claims in these cases as insubstantial but it is not difficult to imagine that a Court, reluctant to play an "activist" role, would decline to immerse itself in the complexities or controversy surrounding the school finance question. Perhaps the Court would prefer to remain out of the "educational thicket" just as, in the reapportionment area before *Baker* v. *Carr,*[198] it preferred to avoid the "political thicket." One reason for the Court's eventual willingness to adjudicate reapportionment cases was the unlikelihood of relief emanating from any other area.[199] Neither state courts nor State legislatures showed any inclination to correct the inequities typical of most legislative and Congressional apportionment.

The school finance area presents a somewhat different situation. State courts have been willing to act [200] and have found violations of State constitutions as well as the Federal Constitution.[201] State legislatures,[202] as well as State Executives,[203] also have demonstrated that they are sensitive to the inequiable manner in which educational resources are distributed. The Federal Government, moreover, is involving itself with this question and there have been recent proposals for greater Federal efforts to help reform educational financing.[204] It is possible, therefore, that the Supreme Court might chose to curtail the role of Federal courts in this area.

The interests at stake in the school finance controversy, however, are so basic that it would seem necessary for the Court to define the rights involved and order rapid remedial action—a course it could take without necessarily stipulating in detail just what plan should be adopted.[205] Assuming, therefore, that the Court chooses to regard its affirmances in *McInnis* and *Burruss* in the limited manner suggested by *Serrano*, the court could fully consider the merits in the *Rodriguez* case. A decision to affirm the lower court might be narrowly based.[206] The Supreme Court could analyze the Texas school finance system in terms of its impact on Mexican Americans—as does this Report—and conclude that there has been a denial of equal protection.[207] Or the Court could face directly, as did the Texas court the question of whether an educational financing system that distributes its benefits in relation to wealth violates the Fourteenth Amendment. A decision on the merits undoubtedly would involve application of the "rational basis" or "compelling state interest" tests.

We already have seen how these tests developed and how they have been applied in the recent school finance cases. *Serrano* treated the "compelling interest" doctrine as an established member of the Supreme Court household of adjudicatory formulas. If that doctrine retains its vitality, it is likely that most present school finance systems will be found wanting under the equal protection clause. The Court has recognized wealth as a "suspect" classification and the arguments seem compelling to classify education as a "fundamental interest." Once either or both of these categorizations are made, it would seem unlikely for the Court to recognize any "compelling state interest" to continue the present inequities.

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[198] 369 U.S. 186 (1962). This decision contains an extensive discussion of the "justiciability" issue.

[199] See Mr. Justice Clark concurring in *Baker* v. *Carr, Id.* at 258–59.

[200] See *Serrano* v. *Priest, op. cit. supra* note ; *Hollins* v. *Shofstall, op. cit. supra* note ; *Robinson* v. *Cahill, op. cit. supra* note.

[201] See *Serrano* v. *Priest, supra* and *Robinson* v. *Cahill, supra.*

[202] In Minnesota, the plaintiffs in *Van Dusartz* v. *Hatfield, op. cit. supra* note agreed to dismiss their suit, without prejudice, in December 1971 because they believed that the State's revised school aid formula (passed by the legislature on October 30, 1971), while not meeting the "strict constitutional standard set forth in the Court's October 12 memorandum . . . it appears that [it] . . . is considerably closer to meeting the constitutional standard of fiscal neutrality than the previous statute." See Lawyers' Committee tabulation, appendix.

[203] In New York State, Governor Rockefeller appointed a Commission on the Quality, Cost and Financing of Elementary and Secondary Education to explore this area.

[204] See Report of The President's Commission on School Finance, *Schools, People and Money* (1972).

[205] In *Baker* v. *Carr, op. cit. supra* note at 226 the Court rejected the argument that manageable judicial standards could not be fashioned and said: "Judicial standards under the Equal Protection Clause are well developed and familiar, and it has been open to courts since the enactment of the Fourteenth Amendment to determine, if on the particular facts they must, that a discrimination reflects *no* policy, but simply arbitrary and capricious action." (ital in original).

[206] When passing on constitutional questions, the Court generally prefers to limit its decision as narrowly as possible. See, *e.g.*, *Garner* v. *Louisiana*, 368 U.S. 157 (1961); *Sweatt* v. *Painter*, 339 U.S. 629 (1950); *Alabama State Federation of Labor* v. *McAdory*, 325 U.S. 450 (1945); *Village of Euclid* v. *Ambler Realty Co.*, 272 U.S. 365 (1926).

[207] As noted *supra* viewing school finance disparities in terms of racial and ethnic discrimination is infinitely more complex and less generally applicable than a wealth analysis.

We now will review briefly recent Supreme Court decisions that relate to these tests and criteria that undoubtedly will figure prominently in the argument of the *Serrano* issue before the Court.

Dandridge v. *Williams*,[208] suggests the Court is reluctant to add to the class of "fundamental interests" and adverse to treating all wealth distinctions as "suspect." Here the Court concluded that even in cases involving "the most basic economic needs of impoverished human beings," [209] it will apply the "rational basis" test absent some improper or "suspect" classification. This case involved a challenge to Maryland's administration of the Aid to Families with Dependent Children (AFDC) program. Maryland, through a "maximum grant regulation," imposed a limitation on the size of assistance grant any one family unit could receive. The effect of this regulation was to provide families of six or fewer members [210] with assistance sufficient to meet fully their determined standard of need but "to deny benefits to additional children born into a family of six, thus making it impossible for families of seven persons or more to receive an amount commensurate with their actual needs. . . ." [211]

The Court majority, in an opinion by Mr. Justice Stewart, described the issue before it in these words:

> . . . we deal with state regulation in the social and economic field, not affecting freedoms guaranteed by the Bill of Rights, *and claimed to violate the Fourteenth Amendment only because the regulation results in some disparity in grants of welfare payments to the largest AFDC families.* (emphasis added)[212]

Applying the traditional equal protection test, the court concluded that the regulation was "rationally supportable":

> In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some "reasonable basis," it does not offend the Constitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequality." *Lindsley* v. *National Carbonic Gas Co.*, 220 U.S. 61, 78.[213]

The Court conceded that the cases it relied upon for the traditional equal protection test "in the main involved state regulation of business and industry" and that the "administration of public welfare assistance, by contrast, involves the most basic economic needs of impoverished human beings." [214] This difference, however, did not require the application of a more stringent constitutional standard. The Court noted, however, that this case did not involve a contention that the Maryland regulation was infected with a racially discriminatory purpose or effect such as to make it inherently suspect.[215]

Apparently, what most influenced the Court in this case was that the classification involved did not appear too unreasonable. The language of the Court suggests that it was not especially moved by a regulation that resulted "only . . . in some disparity in grants of welfare payments to the largest AFDC families." [216] This distinction between differently situated poor families the Court did not choose to regard as "suspect". Nor did the Court undertake an in depth exploration of the nature of the interests involved by the regulation, except to note that they were important.

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[208] 397 U.S. 471 (1970).

[209] *Id.* at 485.

[210] It is not entirely clear how large a family unit must be before it receives less than the subsistence allowance. See *Id.* at 509 note 2.

[211] *Id.* at 490.

[212] *Id.* at 484. The Court disagreed with the district court that the regulation was invalid for "overreaching" *i.e.*, that it dealt too broadly and indiscriminately with the entire group of AFDC eligibles. The concept of "overreaching," the Court concluded, is applicable when a regulation is challenged as sweeping so broadly as to impinge upon activities protected by the First Amendment guarantee of free speech. *Ibid.*

[213] *Id.* at 485.

[214] *Ibid.*

[215] *Ibid.* note 17.

[216] *Id.* at 484. The Court noted at one point that the maximum grant regulation affects "only one-thirteenth of the AFDC families in Maryland . . . ." *Id.* at 480, n. 10. At another point, the Court suggested that absent the maximum grant regulation a family headed by an unemployed person would receive more than one supported by an employed breadwinner earning the minimum wage. *Id.* at 486, n. 19. See Note, "The Equal Protection Clause and Exclusionary Zoning After *Valtierra* and *Dandridge*", 81 Yale L.J. 61, 80 (1971): "The *Dandridge* Court may well have reasoned that rather than disproportionately disadvantaging the poor through governmental action, the Maryland statute merely refused to extend assistance on an equal basis to a sub-class of the poor, *viz.* those with large families." See also Lefcoe, "The Public Housing Referendum Case, Zoning, and the Supreme Court," 59 Cal. L. Rev. 1384, 1424 n. 140 (1971).

The dissenting opinion of Mr. Justice Marshall rests heavily on the unfairness of the classification created by the Maryland regulation. According to Justice Marshall:

> This classification process affected by the maximum grant regulation produces a basic denial of equal treatment. Persons who are concededly similarly situated (dependent children and their families), are not afforded equal, or even approximately equal, treatment under the maximum grant regulation. Subsistence benefits are paid with respect to others. Some needy families receive full subsistence assistance as calculated by the State; the assistance paid to other families is grossly below their similarly calculated needs.[217]

Justice Marshall does not find either the "traditional", "rational basis" equal protection test or the "compelling" interest test [218] satisfactory to an analysis of this case. Instead, he concentrates upon "the character of the classification in question, the relative importance to individuals in the class discriminated against of the government benefits they do not receive, and the asserted State interests in support of the classification." [219] As indicated, Justice Marshall regards the classification in this case as improper—"even under the Court's 'reasonableness' test" [220]—since he views the government benefits involved as vital and he attaches little weight to any of the State's justifications for its regulation. He concludes:

> . . . it cannot suffice merely to invoke the spectre of the past and to recite from *Lindsley* v. *Natural Carbonic Gas Co.* and *Williamson* v. *Lee Optical of Oklahoma, Inc.* to decide this case. Appellees are not a gas company or an optical dispenser; they are needy dependent children and families who are discriminated against by the State. The basis of that discrimination—the classification of individuals into large and small families—is too arbitrary and too unconnected to the asserted rationale, the impact on those discriminated against—the denial of even a subsistence existence—too great, and the supposed interests served too contrived and attenuated to meet the requirements of the Constitution. In my view Maryland's maximum grant regulation is invalid under the Equal Protection Clause of the Fourteenth Amendment.[221]

In March 1971, the Court decided *Boddie* v. *Connecticut* [222] where indigents challenged the constitutionality of a statute requiring the payment of court fees and costs incident to divorce proceeding. The Court might simply have relied on the *Griffin* v. *Illinois* [223] line of cases and held that equal protection is denied when access to the courts is dependent on wealth. This was the course advocated in the concurring opinions of Justices Douglas and Brennan. The majority opinion of Justice Harlan, however (joined by Chief Justice Burger and Justices White, Marshall, Stewart and Blackmun), resorted to the "due process of law" standard of the Fourteenth Amendment.[224] Recognizing that "marriage involves interests of basic importance in our society"[225] and that the State monopolizes the means of dissolving marriages,[226] Justice Harlan concluded that the plaintiffs had been denied "an opportunity to be heard upon their claimed right to a dissolution of their marriages, and, in the absence of sufficient countervailing justification for the State's action", had been denied due process.[227] The opinion, therefore, emphasizes the unfairness of lack of access to the courts when marriage is involved; the emphasis is on marriage—not on indigency. The opinion, moreover, recognizes that some interests—here marriage—are of "basic importance in our society" and that the State requires "sufficient countervailing justification" to impinge in them. Thus, the Court, in applying a "compelling interest" test in the due process context, seems to be developing a dual standard for testing due process claims parallel to that used in the equal protection area.[228]

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[217] *Id.* at 518.

[218] In describing the application of the "compelling" interest test, Justice Marshall seems to limit it to those instances where it is agreed that a "fundamental right" is involved. *Id.* at 520. As we have shown, *supra*, this is just one branch of the "compelling" interest test. The Court also has applied the test when the classification involved a "suspect" categorization.

[219] *Id.* at 520-21. Justice Marshall's formulation does not differ materially from the "compelling" interest approach used by the court in *Serrano* where the nature of the classification and the importance of the interest involved were analyzed before concluding that the State was required to show a "compelling" interest for its classification. Justice Marshall concedes that the Court has essentially applied his analysis in other cases "though the various aspects of the approach appear with a greater or lesser degree of clarity in particular cases." *Id.* at 521, n. 15.

[220] *Id.* at 529.

[221] *Id.* at 529-30. The *Dandridge* decision has been criticized. See, *e.g.*, Dienes, "To Feed the Hungry: Judicial Retrenchment in Welfare Adjudication", 58 Cal. L. Rev. 555 (1970); Graham, "Poverty and Substantive Due Process", 12 Ariz. L. Rev. 1 (1970); Note, "The Supreme Court, 1969 Term", 84 Harv. L. Rev. 1, 60 (1970). Surprisingly, *Dandridge* was not mentioned by the Court in *Serrano*. In *Van Dusartz*, the Court dismissed *Dandridge* with these words: "One can concede the significance of welfare payments to an indigent and yet accept the result in *Dandridge* v. *Williams*, where the Court did not face a suspect classification." *Van Dusartz* v. *Hatfield*, 334 F. Supp. 870, 875 (D. Minn. 1971).

[222] 401 U.S. 371 (1971).

[223] 351 U.S. 12 (1956). See also cases cited in note *supra*.

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[224] The Fourteenth Amendment, in addition to proscribing denials of equal protection by the States also provides that no State shall "deprive any person of life, liberty, or property, without due process of law . . . ." Justice Douglas, in his concurrence complains that the due process clause "has proven very elastic" whereas "rather definite guidelines have been developed" for construing the equal protection clause. *Id.* at 384–85. *Cf. Bolling* v. *Sharpe*, 347 U.S. 497, 499 (1954). (" 'The equal protection of the laws' is a more explicit safeguard of prohibited unfairness than 'due process of law', and, therefore, we do not imply that the two are always interchangeable phrases.") Generally, invocation of the due process clause has a greater overall impact. When a state law is found to violate due process, the state's attempt to regulate a particular subject is completely circumscribed. "Invocation of the equal protection clause on the other hand, does not disable any governmental body from dealing with the subject at hand. It merely means that the prohibition or regulation must have a broader impact." Justice Jackson concurring in *Railway Express* v. *New York*, 336 U.S. 106, 112 (1949). There long has been a dispute regarding the meaning and scope of the due process clause. Such questions as whether the due process clause incorporates all or some of the prohibitions of the Bill of Rights have concerned the Court for decades. See *e.g.*, *Adamson* v. *California*, 332 U.S. 46 (1947); *Duncan* v. *Louisiana*, 391 U.S. 145 (1968). To those who favor the application of the due process clause on a case by case basis, the test has been one of "fundamental fairness". *Duncan* v. *Louisiana*, *supra* at 187. Justice Black, long an opponent of this application of the due process clause, strongly criticized its application in the *Boddie* case. *Boddie* v. *Connecticut*, *supra* at 392–94. Justice Black also did not regard the charging of fees and costs as a denial of equal protection. Id. at 389.

[225] *Boddie* v. *Connecticut*, *op. cit. supra* note at 376.

[226] Justice Harlan emphasized that unlike other contractual arrangements which can be rescinded or amended out of court, the marriage contract only can be dissolved in a judicial proceeding. Parties to ordinary commercial contracts have alternative means of conflict resolution; with respect to marriage, the State monopolizes the only means available for resolving disputes. Thus, persons who seek access to courts to dissolve marriages do so no more voluntarily than a defendant who is in court as a result of being sued. Special protections therefore are appropriate. *Id.* at 375–77.

[227] *Id.* at 381–82.

[228] For a perceptive discussion of indigency and court access see Klimpl, "Access to Court: A Fundamental Right?" 4 Col. Surv. of Human Rights Law (1972). Two months after its decision in the *Boddie* case, the Court took action in eight cases which seemed to suggest that *Boddie* was to be given a narrow application. Review was denied in five cases: 1) *In re Garland*, 402 U.S. 966 (1971) which involved the right of a bankrupt to file a petition in bankruptcy without payment of a filing fee; (*But see U.S.* v. *Kras*, 40 L.W. 3385 (1972) where, on February 21, 1972, the Court agreed to review a similar case.) 2) *Meltzer* v. *C. Buck Le Craw & Co.*, 402 U.S. 954 (1971) involved a statute that penalized a tenant double his rent if he went to court to challenge his eviction and lost; 3) *Bourbeau* v. *Lancaster*, 402 U.S. 964 (1971) where an indigent could not afford an appeal docketing fee in a guardianship action; 4) *Beverly* v. *Scotland Union Enterprises, Inc.*, 402 U.S. 936 (1971) involving an indigent who could not post the penalty bond required to appeal from an adverse judgment in a housing eviction case; and 5) *Kaufman* v. *Carter*, 402 U.S. 864 (1971) where an indigent mother was denied court appointed counsel to defend herself against a state civil suit to declare her an unfit mother and take away five of her seven children. Two cases were sent back to the lower courts for reconsideration in light of *Boddie*; 1) *Sloatman* v. *Gibbons*, 402 U.S. 939 (1971) where a filing fee was required in divorce cases but an indigent could obtain an extension of time to pay that fee and 2) *Frederick* v. *Schwartz*, 402 U.S. 937 (1971) involving an indigent who could not afford to appeal a welfare claim from an adverse court decision. In the eighth case, *Lindsey* v. *Normet*, 402 U.S. 491 (1971), involving a situation similar to the *Beverly* case, *supra*, the Court agreed to review the decision below. See text accompanying note *infra* for a discussion of the Court's decision in the *Lindsey* case. Justice Black disagreed with the Court's decision in all but the *Lindsey* case. He argued that if *Boddie* is to be the law, it should not be confined to divorce cases but extended to all civil cases. It would be inconsistent with equal protection to extend special favors to divorce litigants. According to Justice Black, ". . . the decision in *Boddie* v. *Connecticut* can safely rest on only one crucial foundation—that the civil courts of the United States and each of the States belong to the people of this country and that no person can be denied access to those courts, either for a trial or an appeal, because he cannot pay a fee, finance a bond, risk a penalty, or afford to hire an attorney . . . . There is simply no fairness or justice in a legal system which pays indigents' cost to get divorces and does not aid them in other civil cases which are frequently of far greater importance to society." *Meltzer* v. *C. Buck Le Craw & Co.*, 402 U.S. 954, 955–56, 960 (1971).

Later the same month of the *Boddie* decision the Court decided *Labine* v. *Vincent*,[229] where the Court concluded that there was "nothing in the vague generalities of the Equal Protection and Due Process Clauses which empower the Court to nullify the deliberate choices of the elected representatives of the people of Louisiana." [230] At issue was a Louisiana statute which accorded different inheritance rights to illegitimate children, though duly acknowledged, than to legitimate children of a father who died without a will. Chief Justice Burger and Justices Stewart and Blackmun joined in an opinion by Mr. Justice Black, concurred in separately by Mr. Justice Harlan, which concluded that there was no constitutional basis for upsetting the disparate treatment accorded the inheritance rights of legitimate and illegitimate children under Louisiana law. In a strongly worded dissent, Mr. Justice Brennan, joined by Justices White, Douglas and Marshall concluded that there was "no rational basis to justify the distinction Louisiana creates between an acknowledged illegitimate child and a legitimate one" and that the "discrimination is clearly invidious." [231]

Illegitimate children had received somewhat better treatment in 1968 when Justices Brennan, White, Douglas and Marshall could recruit as allies Chief Justice Warren and Justice Fortas. In *Levy* v. *Louisiana* [232] and *Glona* v. *American Guarantee and Liability Ins. Co.*, [233] these six Justices, in an opinion by Mr. this as a case involving "basic civil rights," [234] In *Glona*, the Court concluded that Justice Douglas, found that Louisiana had denied equal protection of the laws in situations involving illegitimate children. In *Levy*, the Court held that Louisiana could not deny illegitimates the right to recover for the wrongful death of their mother; the Court followed standard equal protection analysis and treated recover for the deaths of their illegitimate children.[235] In both of these cases, Justhere was no rational basis for a law which denied natural mothers the right to tice Black, Harlan and Stewart dissented.[236] When, accompanied by Chief Justice Burger and Justice Blackmun, they constituted the majority in *Labine*, they narrowly restricted the scope of *Levy* and *Glona* noting that "*Levy* did not say and cannot fairly be read to say that a State can never treat an illegitimate child differently from legitimate offspring." [237] Needless to say, the dissenting Justices in *Labine* relied heavily on *Levy* and *Glona*.[238]

A month after *Labine*, the Court again refused to invoke the equal protection clause to invalidate a legislative classification—this time, one alleged to be based on poverty. In *James* v. *Valtierra*,[239] the Court upheld a provision of the California Constitution requiring that low-rent public housing projects be approved by a majority of the qualified voters in the community affected. It distinguished *Hunter* v. *Erickson*,[240] relied on by the lower court, where the Supreme Court invalidated a provision of a city charter which required that any ordinance regulating real estate on the basis of race, color, religion or national origin could not take effect without approval by a majority of those voting in a city election. That case, said the Court in *Valtierra*, involved a classification based on race while the California law requires "approval for *any* low-rent public housing project, not only for projects which will be occupied by a racial minority." (emphasis added.) [241] The Court placed great reliance on the place of referendums in California's history and concluded that "[t]his procedure for democratic decisionmaking does not violate the Constitutional command that no State shall deny to any person the equal protection of the laws."[242]

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[229] 401 U.S. 532 (1971).
[230] *Id.* at 539–40.
[231] *Id.* at 558.
[232] 391 U.S. 68 (1968).
[233] 391 U.S. 73 (1968).
[234] *op. cit. supra* note at 71.
[235] Mr. Justice Douglas wryly commented: "It would, indeed, be farfetched to assume that women have illegitimate children so that they can be compensated in damages for their death." *Id.* at 75.
[236] 391 U.S. 73 (1968).
[237] *Labine* v. *Vincent*, 401 U.S. 532, 536.
[238] *Id.* at 550–51.
[239] 91 S. Ct. 1331 (1971).
[240] 393 U.S. 385 (1969).
[241] *op. cit. supra* note at 1333.

Justice Marshall, dissenting for himself and Justice Brennan and Blackmun found the special treatment of low income housing in this case to be invidious discrimination based on poverty, prohibited by the Fourteenth Amendment and previous Court decisions.[243] The dissent criticizes the majority for only testing the California law in terms of racial discrimination. "It is far too late in the day", said Justice Marshall, "to contend that the Fourteenth Amendment prohibits only racial discrimination; and to me, singling out the poor to bear a burden not placed on any other class of citizens tramples the values that the Fourteenth Amendment was designed to protect." [244]

It is possible that the explanation offered for the Court's decision in *Dandridge* also is appropriate to *Valtierra*.[245] The Court may have recognized the classification at issue as imposing *some* hardships on the poor but it may not have considered the extent of the hardship great enough to warrant closer scrutiny of the State law involved.[246] The California law required a referendum only in the case of low-rent public housing;[247] other housing that would benefit low and moderate income families was not subject to a referendum.[248] The Court also may not have believed that access to public housing warranted the same degree of protection as, for example, access to the courts.[249]

Another difference between *Dandridge* and *Valtierra*—besides the extent of the harm involved—and the cases in which the "compelling state interest" doctrine has been applied is that both of these cases involved relatively recent government programs—public welfare and public housing. The rights of citizens to welfare and housing, unlike the right to vote, to access to the courts and, perhaps, to education, are not deeply imbedded in our laws or traditions. *Valtierra* and *Dandridge* suggest, therefore, that the Court does not believe that the government has a general obligation to remedy existing economic inequalities or provide an adequate supply of low-income housing. When the government ventures into these fields, its actions should not be subjected to intensive judicial scrutiny. One commentator has suggested that:

> . . . there are certain limits to the government's Constitutional obligation to further fundamental interests and relieve the plight of racial minorities and the poor, and that when remedial action is undertaken outside the area of constitutional compulsion the stringent judicial scrutiny normally trig-

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[242] *Id.* at 1334. The fact that this case involved a referendum could not have been the principal element motivating the Court's decision. In other situations, the Court has invalidated actions accomplished by referendum. See, *e.g.*, ***Reitman* v. *Mulkey***, 387 U.S. 369 (1967); ***Hunter* v. *Erickson***, 393 U.S. 385 (1969); ***Lucas* v. *Colorado General Assembly***, 377 U.S. 713 (1964). See also Comment, "*James* v. *Valtierra*: Housing Discrimination By Referendum?" 39 Univ. of Chic. L. Rev. 115, 117–18 (1971). One comemntator has suggested that newly enacted referendum requirements for public housing will not be sustained. See Lefcoe, *op. cit. supra* note at 1457. Another commentator has reached a contrary conclusion. See Comment, "*James* v. *Valtierra*: Housing Discrimination by Referendum?" *Id.* at 127 n. 59. The New York State Assembly recently approved a law subjecting public housing projects to referendums—apparently in reaction to the public housing controversy in Forest Hills, Queens. N.Y. Times, Mar. 14, 1972 at 1, col. 4. This bill is patently unconstitutional.

[243] *Id.* at 1335. Justice Marshall relied on ***Douglas* v. *California***, 372 U.S. 353 (1963) ***McDonald* v. *Board of Election***, 394 U.S. 802 (1969) and ***Harper* v. *Board of Elections***, 383 U.S. 663 (1966).

[244] *Id.* at 1335.

[245] As noted, the ***Serrano*** decision, of August 30, 1971, did not discuss ***Dandridge***. Nor did it discuss ***Valtierra***. Both of these decisions were decided before ***Serrano***—April 6, 1970 and April 26, 1971, respectively.

[246] See Lefcoe, ***op cit. supra*** note at 1416: ". . . the Court's opinion was based on a determination that the article was reasonable even though it affected poor people specially." See also Note, "The Equal Protection Clause and Exclusionary Zoning After ***Valtierra*** and ***Dandridge***," 81 Yale L. J. 61, 80 (1971).

[247] Nor was it clear that the referendum provision doomed public housing in California. 62 percent of the referendums covering 52 percent of the proposed units had yielded affirmative results. See Lefcoe, ***op. cit. supra*** note at 1400.

[248] See, e.g., United States Housing Act of 1937 § 23, as amended, Housing and Urban Development Act of 1965 § 103(a), 42 U.S.C. § 1421(b) (1970) (leased housing program); 42 U.S.C. § 1421(b) (1970) (turnkey I): 42 U.S.C. § 1421(b)(a)(3) (1970) (turnkey leasing); 12 U.S.C. § 1701 (1970) (rent supplement program). See also Sloane, "Toward Open Adequate Housing: The 1968 Housing Act: Best Yet—But Is It Enough?" 1 Civ. Rights Dig., No. 3 (1968).

[249] Public housing accounts for only about 1 percent of the Nation's housing stock and fewer than 10 percent of people classified as in poverty occupied publicly owned units. See Lefcoe, ***op cit. supra*** note at 1423–24. See also Lefcoe, ***Id.*** at 1391: "Denying an indigent person the right to a divorce can be regarded as a greater hardship than the one inflicted by [the California law]."

> gered by the presence of fundamental interests and suspect classifications is no longer appropriate.[250]

Valtierra, coming on the heels of *Dandridge*, has created concern that the Court is abandoning its special solicitude for the poor and that the "compelling state interest" doctrine will be allowed to atrophy. One commentator concluded:

> . . . *Valtierra* affirms once again that poverty or weath classifications are not being assigned that same station as racial categories . . . *Valtierra* can be seen as marking the end of a doctrinal detour.[251]

Another commentator decried the fact that in *Valtierra* "the Court may have signaled a retreat from its formerly expansive interpretations of the fourteenth amendment."[252] Recent decisions of the Court, however, suggest that *Valtierra* and *Dandridge* do not necessarily herald a turn-around from the past.

On February 23, 1972, the Court reaffirmed its position that the poor are entitled to special considerations when they are seeking access to the courts. The Court, however, refused to hold that the poor's interest in decent shelter is so fundamental as to warrant special Court scrutiny when dealing with State statutes regulating landlord-tenant relations. At issue in *Lindsey* v. *Normet*[253] were three provisions of Oregon's Forcible Entry and Wrongful Detainer Statute which provided that 1) trials in eviction proceedings were to be held no later than six days after the complaint was served, unless the tenant provided security for accruing rent; 2) the only issue that could be considered at the trial was the tenant's failure to pay rent; any defenses, such as lack of repairs, could not be raised; 3) if the tenant lost the case and wished to appeal, he had to post a bond, guaranteed by two sureties for twice the amount of rent expected to accrue during the appeal, the bond to be forfeited if the lower Court decision was affirmed.

The Court held that neither the expedited trial nor limitation of defenses provisions violated the due process or equal protection clauses. Due process requirements were met since the proceeding was sufficiently simple that a short notice requirement was not unreasonable and since other types of actions were available to the tenant to raise whatever defenses he had. Nor was equal protection violated because suits under the statute differed significantly from other litigation where the time between complaint and trial is substantially longer and where a broader range of issues may be considered. The potential application of the statute reaches all tenants—rich and poor, commercial and noncommercial. Treating tenants sued for possession of property differently from tenants sued in other types of actions, moreover, is impermissible only if there is no valid State objective. An analysis of the purposes of the Oregon law convince the Court that "Oregon was well within its Constitutional powers in providing for rapid and peaceful settlement of these disputes."[254]

The Court, having concluded that the "rational basis" test protects the Oregon statute from an equal protection attack, next considered appellants argument that a more stringent standard than mere rationality should be applied. Appellants argued that:

> . . . the "need for decent shelter" and the "right to retain peaceful possession of one's home" are fundamental interests which are particularly important to the poor and which may be trenched upon only after the State demonstrates some superior interest.[255]

The appellants relied on the "suspect" classification and "fundamental interest" cases.[256] In rejecting this argument, the Court said:

> We do not denigrate the importance of decent, safe and sanitary housing. But the Constitution does not provide judicial remedies for every social and economic ill. We are unable to perceive in that document any *constitutional guarantee of access to dwellings of a particular quality* or any recognition of the right of a tenant to occupy the real property of his landlord beyond

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[250] See Note, "The Equal Protection Clause and Exclusionary Zoning After *Valtierra* and *Dandridge*," 81 Yale L.J. 61, 79 (1971).

[251] See Lefcoe, *op. cit. supra* note at 1457, 1458. See also Schoettle, *op. cit. supra* note at 1405 where the author states that the *Dandridge* and *Valtierra* decisions "cast doubt upon the status of poverty as a criterion meriting particular scrutiny under the equal protection clause."

[252] See Comment, "*James* v. *Valtierra*: Housing Discrimination by Referendum?" 39 Univ. of Chic. L. Rev. 115, 142 (1971). *Cf. Note*, "The Equal Protection Clause and Exclusionary Zoning After *Valtierra* and *Dandridge*," 81 Yale L.J. 61, 72 (1971): "Despite cries of despair to the contrary, "*Dandridge* and *Valtierra* do not signal an end to the relevance of equal protection doctrine in assessing the constitutionality of exclusionary zoning laws."

[253] 40 L.W. 4184 (1972).

[254] *Id.* at 4189.

[255] *Ibid.*

[256] *Id.* at 4181, notes 21–23.

> the term of his lease, without the payment of rent or otherwise contrary to the terms of the relevant agreement. Absent Constitutional mandate, the assurance of adequate housing and the definition of landlord-tenant relationships is a legislative not a judicial function. Nor should we forget that the Constitution expressly protects against confiscation of private property or the income therefrom.[257]

The Court, however, concluded that the double-bond prerequisite for appealing did violate the equal protection clause; it discriminates against tenants appealing from adverse decisions and cannot be related to any valid State objective. The Court relied on those cases which hold that where an appeal is granted to some litigants it cannot be capriciously or arbitrarily denied to others.[258] Here the Court found the State's justification for the double-bond provision to be "arbitrary and irrational" and noted:

> The discrimination against the poor, who could pay their rent pending an appeal but cannot post the bond is particularly obvious. For them, as a practical matter, appeal is foreclosed, no matter how meritorious their case may be. The non-indigent . . . appellant [in this type of action] also is confronted by a substantial barrier to appeal faced by no other civil litigant in Oregon.[259]

In a separate opinion, Justice Douglas agreed that the double bond provision violated the equal protection clause. He characterized the interest in one's home as a "fundamental interest"[260] and proceeded to apply the "compelling interest" test:

> Modern man's place of retreat for quiet and solace is the home. Whether rented or owned it is his sanctuary. Being uprooted and put into the street is a traumatic experience. Legislatures can of course protect property interests of landlords. But when they weigh the scales as heavily as does Oregon for the landlord and against the fundamental interest of the tenant they must be backed by some "compelling interest."[261]

Justice Douglas, however, disagreed with the majority's view that the expedited trial provision and one-issue-trial requirement of the Oregon statute did not violate the due process clause. The former provision effectively denied tenants' access to the courts, particularly slum tenants; "this kind of summary procedure usually will mean in actuality no opportunity to be heard."[262] While normally a State may bifurcate trials by considering one issue in one suit and another issue in another suit. . . . where the right is so fundamental as the tenant's claim to his home, the requirements of due process should be more embracing."[263]

Concern for the poor was expressed by the Court in *Lindsey* but was not controlling in finding an equal protection violation; discrimination related to wealth, however, was directly related to the Court's finding of an equal protection violation in *Bullock* v. *Carter*,[264] decided the day after *Lindsey*. *Bullock* involved a Texas law requiring a candidate to pay a filing fee as a condition for being on the ballot in a primary election. Fees ranged as high as $8,900.[265]

At the outset, the Court recognized it had to decide which standard of review was appropriate. The Court said:

> The threshold question to be resolved is whether the filing fee system should be sustained if it can be shown to have some rational basis, [citing *Dandridge and McGowan* v. *Maryland*, 366 U.S. 420] or whether it must withstand a more rigid standard of review.[266]

As in *Harper* v. *Virginia Board of Elections*,[267] the requirement here had an impact on the franchise since the requirement of high filing fees narrows the field of candidates, thus limiting the choice of voters. And this limitation especially affects the less affluent. As the Court said:

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[257] *Id.* at 4190.
[258] *Id.* at 4191
[259] *Ibid.*
[260] *Id.* at 4192.
[261] *Ibid.*
[262] *Id.* at 4193.
[263] *Id.* at 4195. Justice Douglas added: "In the setting of modern urban life, the home, even though it be in the slums, is where man's roots are. To put him into the street when the slum landlord, not the slum tenant, is the real culprit deprives the tenant of a fundamental right without any real opportunity to defend. Then he loses the essence of the controversy, being given only empty promises that somehow, somewhere may allow him to litigate the basic question in the case." *Id.*
[264] 40 L.W. 4211 (1972).
[265] *Id.* at 4212 note 11.
[266] *Id.* at 4212.
[267] 383 U.S. 663 (1966).

> . . . there is the obvious likelihood of this limitation falling most heavily on the less affluent segment of the community, whose favorites might be unable to pay the large costs required by the Texas system . . . [I]t gives the affluent the power to place on the ballot their own names or the names of persons they favor. * * * We would ignore reality were we not to recognize that this system falls with unequal weight on voters, as well as candidates, according to their economic means.[268]

The Court, relying on *Harper*, concluded that because of the influence of an impact on the franchise and an impact which is "related to the resources of the voters supporting a particular candidate," more is required than a showing that the law has some rational basis; it is necessary that the law be "closely scrutinized" and found reasonably necessary to the accomplishment of legitimate state objectives.[269] Applying this test, the Texas law is found wanting. Even under conventional standards of review—the rational basis test—the Court considers the Texas law "extraordinarily ill-fitted" to the goals Texas asserts the law is designed to achieve.[270] The Texas law, the unanimous Court concluded, denies equal protection because:

> . . . Texas has erected a system which utilizes the criterion of ability to pay as a condition to being on the ballot, thus excluding some candidates otherwise qualified and denying an undetermined number of voters the opportunity to vote for candidates of their choice.[271]

The *Bullock* case appears to move well beyond *Harper*. It shows special concern for the interests of the less affluent. While *Harper* said that a person could not be denied the ballot because of his economic circumstances, *Bullock* says that economic circumstances cannot be allowed to limit the impact of a person's vote. The analogy to the racial cases is close. The Fifteenth Amendment proscribes voting denials based on race and such cases as *Gomillion* v. *Lightfoot*,[272] and *Fortson* v. *Dorsey*[273] suggests that devices that minimize the voting impact of minorities will not be tolerated. At least in the voting area, therefore, the Court appears to be according race and poverty equal consideration.

What do these recent decisions portend for the school finance cases? Obviously, predicting what the Supreme Court will do is risky business, particularly at a time of changing Justices. It seems safe, however, to predict that the Court will continue to specially scrutinize certain types of legislation that affect persons differently because of their wealth.[274] Although the Court has used language indicating that a classification related to wealth is in itself sufficient to warrant close scrutiny,[275] the cases suggest that close scrutiny will not be accorded unless the discrimination based on wealth affects some other important interest or right. Generally, when the interest affected comes within the rubric of "political or civil rights", a person's economic circumstances will not be allowed to result in even a minor impairment of his ability to exercise his right. Thus, wealth may not impede the exercise of the ballot nor may it limit a voter's choice of candidates; wealth may not deny access to the courts in criminal cases, nor may it act as a bar in certain civil cases.

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[268] *op. cit. supra* note at 4214.

[269] *Ibid.*

[270] *Id.* at 4215.

[271] *Id.* at 4216. *cf. Swarb* v. *Lennox*, 40 L.W. 4227 (1972)—decided the day as *Bullock*—where the Court upheld a lower court judgment affording special protections to persons earning less than $10,000 a year who sign contracts that contain confession of judgment clauses which permit creditors to automatically obtain a court judgment in the event the debtor fails to meet the terms of the contract. Again, the Court demonstrated that it is appropriate to consider relative wealth when denials of equal protection are alleged.

[272] 364 U.S. 399 (1960). This case involved a gerrymander which removed Negro voters from the city of Tuskegee. The scheme did not deprive Negroes of the right to vote; it altered the impact of that vote.

[273] 379 U.S. 433, 439 (1965). In *Fortson* the Court indicated it would invalidate multimember voting districts if they could be shown to "minimize" or "cancel out" the voting strength of a racial minority. See also *Burns* v. *Richardson*, 384 U.S. 73, 88 (1966). Compare *Connor* v. *Johnson*, 402 U.S. 690 (1971) with *Whitcomb* v. *Chavez*, 403 U.S. 124 (1971).

[274] That "suspect" classifications may be somewhat ephemeral is illustrated by *Levy* v. *Louisiana supra* and *Glona* v. *American Guarantee and Liability Ins. Co., supra* where the Court concluded that illegitimates constituted a suspect classification and *Labine* v. *Vincent, supra*, where 3 years later, the Court decided that they did not. Perhaps the Court's change of heart was based on its view of the importance of the different interests affected by the classifications—in the former cases, the right to maintain wrongful death actions; in the latter case, the right to inherit. Or perhaps the difference in the decisions related more to the change in the composition of the Court. Nevertheless, the Court's treatment of illegitimates does not necessarily foreshadow its attitude toward the poor. Illegitimacy, perhaps, can be eradicated if there are sufficient disincentives. The Bible, however, tell us: "For ye have the poor always with you." *Matthew* 26:11. Justices also have distinguished between illegitimates and the poor. Compare Chief Justice Taney. *Lessee of Brewer* v. *Blougher*, 14 Pet (39 U.S.) 178, 198–199 (1840): "All illegitimate children are the fruits of crime; differing, indeed, greatly in its degree of enormity," with Mr. Justice Byrnes, *Edwards* v. *California*, 314 U.S. 160, 177 (1941): "Poverty and immorality are not synonomous."

[275] See *McDonald* v. *Board of Election Comm.*, 394 U.S. 802, 807 (1969).

On the other hand, when a wealth classification affects an interest that can be labeled "social or economic", the Court's decision as to whether to afford close scrutiny to the alleged discrimination will depend upon its evaluation of the magnitude of the injury.

The failure, for example, to provide large families on welfare with proportionately more funds than smaller families as in *Dandridge* or the creation of barriers to the construction of some types of housing within the means of the poor as in *Valtierra*, has not been regarded by the Court as resulting in injuries of sufficient magnitude as to warrant close scrutiny.

In this area, however, matters of degree are significant. Although the Court refused to mandate a particular level of subsistence in *Dandridge*, it has declared illegal legislation which barred persons from obtaining subsistence, as in *Traux* v. *Raich* [276] and *Shapiro* v. *Thompson*.[277] Similarly, in *Valtierra*, the Court declined to hold that *some* types of housing could not be restricted, but where restrictions on housing have been general and widespread, the Court has reached contrary conclusions.[278] Economic and social interests, therefore, do obtain close consideration from the Court when their invasion is especially widespread; political interests, however, merit protection even against minor encroachments.[279]

There are strong arguments for treating education as a political or civil right. Many of the reasons for placing education in a special category have been explored in our consideration of the cases which have social interests, therefore, do obtain close consideration from the Court when their invasion is especially widespread; political interests, however, merit protection even against minor encroachments.[280]

There are strong arguments for treating education as a political or civil right. Many of the reasons for placing education in a special category have been explored in our consideration of the cases which have afforded education special treatment and in our review of the place of education in our society. Significantly, the statements by the founding fathers cited earlier emphasized the importance education of the general public played in maintenance of the democratic system rather than the importance it had for an individual in the social and economic areas. As the Court said in *Van Dusartz* v. *Hatfield*:

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[276] 239 U.S. 33 (1915).

[277] 394 U.S. 61 8(1969).

[278] See *eg*, *Buchanan* v. *Warley*, 245 U.S. 60 (1917); *Shelley* v. *Kraemer*, 334 U.S. 1 (1948); *Jones* v. *Alfred Mayer Co.*, 392 U.S. 409 (1968); *Reitman* v. *Mulkey*, 387 U.S. 369 (1967).

[279] The Chairman of the Commission on Civil Rights, Reverend Theodore M. Hesburgh recently commented upon the dichotomy between political and civil rights and economic and social rights. "The rights of individuals in this country have been largely a collection of political and civil liberties which are rooted in a centuries-old tradition . . . But to secure the dignity of human beings more is required than political and civil rights. . . . [T]oo often we have been dealing with social and economic issues in this country as problems, as the discharge of minimal responsibilities to take care of the needy. When we have asked to provide economic or social benefits, we have viewed such action as bestowing a privilege. Our people have political and civil rights; in the economic, social, and cultural areas, we disperse privileges. This is too narrow a view. . . . [T]here is a split in the world between the definitions of rights in the western world and in the socialist world. To socialist governments the great rubric of human rights focuses essentially on economic rights. We, on the other hand, have focused somewhat more on political and civil rights. . . . [T]o make meaningful and civil and political guarantees under the Constitution they must be extended to economic and social rights." See "Beyond Civil Rights," unpublished remarks of Reverend Theodore M. Hesburgh delivered to the American Jewish Committee, May 13, 1971.

[280] The Chairman of the Commission on Civil Rights, Reverend Theodore M. Hesburgh recently commented upon the dichotomy between political and civil rights and economic and social rights. "The rights of individuals in this country have been largely a collection of political and civil liberties which are rooted in a centuries-old tradition . . . But to secure the dignity of human beings more is required than political and civil rights. . . . [T]oo often we have been dealing with social and economic issues in this country as problems, as the discharge of minimal responsibilities to take care of the needy. When we have asked to provide economic or social benefits, we have viewed such actions as bestowing a privilege. Our people have political and civil rights; in the economic, social, and cultural areas, we disperse privileges. This is too narrow a view. . . . [T]here is a split in the world between the definitions of rights in the western world and in the socialist world. To socialist governments the great rubric of human rights focuses essentially on economic rights. We, on the other hand, have focused somewhat more on political and civil rights. . . . [T]o make meaningful the civil and political guarantees under the Constitution they must be extended to economic and social rights." See "Beyond Civil Rights," unpublished remarks of Reverend Theodore M. Hesburgh delivered to the American Jewish Committee, May 13, 1971.

> Education has a unique impact on the mind, personality, and future of the individual child. It is basic to the functioning of a free society and thereby evokes special judicial solicitude.[281]

The Supreme Court has expressed great solicitude for education, noting that "[t]he American people have always regarded education and acquisition of knowledge as matters of supreme importance which should be diligently promoted. . . ."[282] There is a strong possibility, therefore, that the Court will accord the same special treatment to education as now afforded to political and civil rights.[283]

If the Court chooses to regard education as a social or economic interest, whether or not it will afford close scrutiny to educational finance systems will depend upon its evaluation of the magnitude of the injury inflicted by those systems. Just as in *Lindsey*, where the Court concluded that there is no "Constitutional guarantee of access to dwellings *of a particular quality*" (emphasis added) or as in *Dandridge*, where the Court rejected the contentions that a person had a right to a particular level of subsistence, so too the Court might conclude that as long as a State provides an educational program, it will not become involved in question related to the quality or level of that program. As this Report shows, however, the disparities among districts are of enormous magnitude. Even if there is continuing debate over whether additional money will improve educational achievement, there can be no debate that money buys books, laboratory facilities, pleasant surroundings and pays teachers' salaries.[284] The distparities in the availability of funds to different school districts are so extreme that resulting injury is inevitable and substantial.

The substantiality of the disparities, however, seems to distinguish the school finance cases from cases such as *Dandridge* and *Valtierra*. In *Dandridge*, the discrimination between large families and small families was relatively modest.

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[281] 334 F. Supp. 870, 875 (D. Minn. 1971). The court argues that the *Dandridge* opinion supports its special treatment of education. "Even the majority opinion in *Dandridge*," the Court notes, "seems to intimate this by its citation of the decision in *Shelton* v. *Tucker*, 364 U.S. 479, 81 S. Ct. 247, 5 L. 2d 231 (1960) as the exemplar of the Court's commitment to those areas where freedoms guaranteed by the Bill of Rights may be affected 397 U.S. at 484, 90 S. Ct. at 1161. In *Shelton*, Mr. Justice Stewart for the majority had declared that 'The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools', 364 U.S. at 487, 81 S. Ct. at 251." *Id.* at 875 n. 10. The court also found support in the *Valtierra* decision saying "In another respect *Valtierra* actually supports the fundamentality of the interest in education. The Court there emphasized the special importance of the democratic process exemplified in local plebiscites. That perspective here assists pupil plaintiffs who ask no more than equal capacity for local voters to raise school money in tax referenda, thus making the democratic process all the more effective." *Id.* at 875 n. 9. See Coons, Clume and Sugarman, "Educational Opportunity: A Workable Constitutional Test for State Financial Structures", 5 7Cal. L. Rev. 305, 373-389 where the authors review the special status of education. The authors argue that education should be viewed as a "favored interest"—not as a "right"; to treat education as a right is "preposterous" and will create a 'judicial nightmare". Courts would be unable to develop managerable standards. *Id.* at 373-74. In other areas, however, where interests are regarded as 'rights", the courts have had to develop standards and distinguish between degrees of impairment. The "right to vote" involves everything from the denial of the ballot, to dilution of one's vote to limiting one's choice of candidates. See also Silard and White "Intrastate Inequalities in Public Education: The Case for Judicial Relief Under the Equal Protection Clause," 1970 Wis. L. Rev. 7, 18 (1970).

[282] *Meyer* v. *Nebraska*, 262 U.S. 390, 400 (1923). See also Mr. Justice Brennan concurring in *Abington School District* v. *Schempp*, 374 U.S. 203, 230 (1963); ". . . Americans regard the public schools as a most vital civic institution for the preservation of a democratic system of government. It is therefore understandable that the Constitutional prohibitions encounter their severest test when they are sought to be applied in the school classroom."

[283] An alternative to treating education as a political or civil right would be to categorize it as a "fundamental interest", as did the *Serrano* Court. This, however, seems a more porous container than "political or civil right". In *Shapiro* v. *Thompson*, 394 U.S. 618 (1969) welfare payments were treated as a "fundamental interest" since many families depend upon them "to obtain the very means of subsistence—food, shelter, and other necessities of life." Id. at 627. On the other hand, in *Dandridge* v. *Williams*, 397 U.S. 471 (1970), welfare payments were denied the favored "fundamental interest" caption even though they involve "the most basic economic needs of impoverished human beings". Id. at 485. See Mr. Justice Harlan's criticism of the concept of "fundamental interests", *Shapiro* v. *Thompson*, *Id.* at 660–62. Interests regarded as "political or civil rights" almost always receive close scrutiny from the Court when an impairment is alleged; other types of interests may be regarded as fundamental under some circumstnaces and not in other instances. We have preferred to label this second category as "economic and social rights."

[284] See Coons, Clume and Sugarman, *Private Wealth and Public Education* 25–33 (1970); *Burke & Callahan, op. ct. supra* note at 39.

In *Valtierra*, sustaining the California law would not necessarily result in a substantial dimunition of housing opportunities for the poor. These cases might be said to involve classifications based on wealth that impose minimal injury. To be sure, the school finance cases do not involve situations where persons are denied the opportunity to attend school; what is involved is a system which dilutes or diminishes that opportunity. We are not dealing with the type of total deprivations that were involved in *Harper* and *Griffin*. School finance is more like *Baker* v. *Carr* where an irrational structure resulted in the diminishing of a right. Accordingly, a strong argument can be made that the school finance cases involve injury of a sufficiently significant magnitude as to warrant different constitutional treatment.[285]

Should the Court conclude that disparate educational financing schemes encroach on political or civil rights, or, alternatively that they do substantial injury to an economic or social interest, the burden would be on the State to present a strong justification for the inequities it created. The Court, however, might choose to employ the "suspect" classification "fundamental interests" "compelling state interest" terminology that has developed over recent years, and there is nothing in the recent cases to suggest that the Court has abandoned this method of analysis. In *Bullock*, the Court recognized classifications based on wealth as "suspect" and required a "compelling state interest" as a justification; in *Lindsey*, the Court acknowledged that were it faced with a "fundamental interest" the State would be required to demonstrate a "compelling interest" to justify its discrimination. Both of these cases involved an application of the equal protection clause. Accordingly, it seems unlikely that the *Boddie* decision represents a Court determination to abandon the equal protection path in favor of a due process framework.

Once the Court concluded that systems of educational finance that discriminate on the basis of wealth violate the equal protection clause, it would be necessary to frame an appropriate order to secure relief. As *McInnis* v. *Shapiro* [286] demonstrates, there are doubts as to the ability of courts to devise manageable standards that a State could be required to implement. In *McInnis*, the court was asked to order educational funding that met the "needs" of the pupils in various districts. The more recent school finance cases, however, have urged a negative declaration from the courts.[287] The courts have been requested to tell the States what they cannot do, not what they should do. For example, in *Van Dusartz* v. *Hatfield*, the court concluded that "a system of public school financing which makes spending per pupil a function of the school district's wealth violates the equal protection guarantee of the 14th Amendment to the Constitution of the United States." [288] The court did not prescribe any particular formula for remedying the Constitutional violation; in fact, it deferred action until after the then current session of the Minnesota legislature.

There is ample precedent for the Supreme Court to conclude that a particular type of discrimination violates the equal protection clause without prescribing a specific formula for remedying the violation.[289] In *Brown* v. *Board of Educa-*

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[285] *Cf.* Schoettle, *op. cit. supra* note at 1400. "One could not expect a court that regarded state imposition of a flat dollar ceiling per family unit in dispensing AFDC payments as presenting an intractable economic, social, and even philosophical problem insusceptible of judicial resolution to look favorably upon claims of legal entitlement to compensatory education or equality of educational opportunity in some positive sense."

[286] 293 F. Supp. 327 (N.D. Ill. 1968), *aff'd mem. sub. nom., McInnis* v. *Ogilvie,* 394 U.S. 322 (1969).

[287] In *Serrano* v. *Priest*, 5 Cal. 3d 584, 614, 487 P. 2d 1241, 96 Cal. Reptr. 601 (1971) the court concluded that the California educational finance system "classifies its recipients on the basis of their collective affluence and makes the *quality of a child's education* depend upon the resources of his school district and ultimately upon the pocketbook of his parents." (emphasis added). Schoettle, *op. cit. supra* note argues that if the California Court's decision is interpreted to mean that school districts must be of equal *quality*, this would be an inappropriate exercise of judicial power. He contends that "a number of considerations based upon educational research and budgetary theory . . . lend support to the conclusion that the Supreme Court should not hold that the fourteenth amendment requires that the states afford equality of educational opportunity in some positive sense." *Id.* at 1399.

[288] 334 F. Supp. 870, 877 (D. Minn. 1971).

[289] Schoettle, *op. cit. supra* note concludes that ". . . the courts should not attempt to guarantee equality of educational attainment. The means through which such a result might be obtained are at present unknown. The courts are an especially inappropriate institution to make such an effort." *Id.* at 1401. Nevertheless, he says: "Our conclusion that a court should not attempt to insure equality of education result does not dictate that the court should abstain altogether from protecting against inequality. The inability of a court to state with certainty that particular programs will produce equality of educational attainment does not mean that the court cannot remedy instances of injustices and afford protection against too gross an inequality." *Id.* at 1401–1402.

tion[290] the Supreme Court held that separate but equal public school education denied equal protection of the laws. No specific formula was prescribed for attaining a discrimination free school system. Rather, the Court deferred ruling on the question of relief. When, a year later, it directed itself to this question, it merely provided some general guidelines to the lower courts and ordered that plans be implemented for carrying out its 1954 declaration "with all deliberate speed".[291] In subsequent years, numerous questions arose as to what specific systems constituted compliance with the Court's order, and these issues were considered and resolved on a case by case basis.[292] Similarly, when the Court first ventured into the area of reapportionment, it did nothing more than declare that legislative apportionment schemes that dilute the votes of citizens in particular areas violate the equal protection clause.[293] It was left to subsequent cases to define more specifically what types of systems complied with the equal protection clause.[294]

The Court could declare that educational financing schemes that discriminate on the basis of wealth violate the 14th amendment. It could be left to future cases to more concretely define what type of systems are in accord with the equal protection clause.[295] As we indicate *supra*, some commentators anticipate that a Supreme Court declaration in this area will set off a wave of reform by state legislatures. This might well make future court action unnecessary. In fact, as we already have shown, there already has been considerable non-judicial action directed at equalizing state educational finance systems. Dire warnings preceded and accompanied the Supreme Court's involvement in the "political thicket" of legislature reapportionment.[296] Happily, the decision did not involve the Court in unmanageable problems. Rather, compliance has proceeded rather rapidly, and our democracy has been considerably strengthened as a result. The consequences of the Court's involvement in the school finance area might well be the same.

V. DEVELOPING AN EQUITABLE SYSTEM OF SCHOOL FINANCING

Reforming the methods by which our schools are financed is not dependent upon the Supreme Court's response to the school finance cases. As we have shown, State courts, legislatures and executives are acting to assure that the level of education a district offers is not dependent on the wealth of that district.[297]

Many formulas are available to the reformers, and the particular formula selected will have varying impact on different segments of the population and sections of the States.

A. *Impact on the Cities*

There has been much concern for our financially strapped cities where the poor and the minorities are located in large numbers. The expectation has been that a wealth free system of school financing would benefit the cities and their poor and minorities. The opposite may be true.

Under the present system of school financing, a school district's ability to raise money is dependent upon the value of the property in the district subject to taxation as well as the tax rate. There are obvious limits on the degree to which tax rates can be raised; therefore the extent to which a district is property rich is the principal determinant of its ability to raise taxes for schools, and other purposes. Under a wealth free system of financing, educational expenditures cannot be a function of district wealth; property rich districts, therefore, lose the advantages associated with their high property values. Cities face a potential loss of education funds under a wealth free system because, in general, the assessed value of property per pupil in cities is higher than the average in the State.[298]

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[290] 347 U.S. 483 (1954).

[291] *Brown* v. *Board of Education* (II), 349 U.S. 294 (1955).

[292] See note for a collection of sources that discuss the school desegregation litigation subsequent to *Brown*.

[293] See *Baker* v. *Carr*, 369 U.S. 186 (1962).

[294] See *e.g.*, *Gray* v. *Sanders*, 372 U.S. 368 (1963); *Reynolds* v. *Sims*, 377 U.S. 533 (1964). *Wesberry* v. *Sanders*, 376 U.S. 1 (1963).

[295] See *Silard and White, op. cit. supra*, note at 30–31.

[296] See *Colegrove* v. *Green*, 328 U.S. 549 (1946) and Mr. Justice Frankfurter dissenting in *Baker* v. *Carr*, 369 186, 266 (1962).

[297] See text accompanying note *supra*.

This phenomena can be demonstrated by a simple hypothetical. Assume that a State adopts a strict application of the wealth free system by providing an equal expenditure of $1,000.00 for all pupils wherever located—city, rural, or suburban areas. The tax rate required to raise this amount will depend upon the statement average assessed value of property per pupil. The appropriate rate will then be imposed on every district. In districts where the assessed value of property is below the State average, the amount raised will be less than $1,000.00 and the State will have to make up the difference. In districts where it is above, excess taxes will be raised and turned over to the State. Suppose that under the present system Fun City is able to raise $1,000.00 per pupil by taxing at a rate of 3 percent; Poverty Hollow, on the other hand, must tax at a 6 percent rate to raise that same amount. Under our hypothetical, it might require a statewide rate of 4 percent to raise $1,000.00 per pupil statewide. Such a rate would raise Fun City's tax rate by 1 percent. If, in fact, Fun City had been taxing at the rate of 3.5 percent in order to spend $1,200 per pupil, under our hypothesized wealth free system it would find itself taxing at a 4 percent rate and only receiving $1,000.00 per pupil.

Focusing on two specific cities, we compare urban Albany which has a valuation per student of $57,498 with Carthage a rural district with a valuation of $14,109.[299] If both districts taxed at a rate of $.02 for educational revenues, Albany would raise $1,149.96 in local taxes per student, whereas, Carthage would raise only $282.18. Under a strict application of the wealth-free formula of distribution both Carthage and Albany would receive equal expenditures per student. Albany would receive less than before, because the average valuation per student in New York is less than Albany's valuation. Carthage on the other hand with a lower than average valuation per student would receive more than before. If, for example, the average valuation were $40,000 in New York and educational funds were raised by a uniform State property tax of $.02 then a student in Albany would receive only $800 from the property tax revenues. Here, therefore, Albany is receiving less money for the same tax effort.

An analysis of the effect on the central cities of the 37 largest metropolitan areas of providing essentially equal expenditures for all children financed from a broad based statewide tax system of proportional rather than progressive rates has shown that nearly twice as many central cities would receive lower expenditures from the States than they presently receive under existing revenue structures. Coincidentally, in three quarters of the cities in these metropolitan areas, school taxes would rise. For example, in Indianapolis, the tax rate would go from 2.4 to 2.8 while per pupil expenditures would drop from $415 to $377; in Denver, the tax rate would increase from 3.3 to 4.3 as expenditures declined from $667 to $507. If, however, the cities were allowed to keep the additional revenue raised by the higher tax rates, the effect would be significant. In four-fifths of the cases in the largest 37 metropolitan areas, these higher tax rates would have provided the city with more revenue than they will receive under a State distribution system.[300]

Thus, although many cities are losing in assessed value as industry and the wealthy escape to the suburbs, they still are relatively wealthy in terms of assessed value and would be financially prejudiced by a system that provided equal educational expenditures per pupil.[301] The advantages that many cities have over the average district in assessed valuation, however, is overshadowed by special urban problems that have been taken many city schools beyond the crisis stage and on to the verge of financial collapse.

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[298] See Berke and Callahan, *op. cit. supra* note at 55.

Robert Reischauer, a Brookings Institution property tax expert, has said: "It is an interesting hypothesis that central cities are poor. Relative to new growth, of course, cities are declining. But in very few cities is absolute wealth declining. It is probably going up slightly in most cities. Cities have real problems, but maybe it's not their fiscal base, but their excessive needs." Quoted in Myers, "Second Thoughts on the Serrano Case", 5 City 38, 40 (1971). A study by the Fleischmann Commission in New York reveals that virtually every sizable city in New York State falls above the statewide median in wealth as measured by property value per pupil. *Id.* at 40. The poor areas, in terms of taxable wealth, are in the rural areas. See Press Summary, Fleischmann Commission 5, 6 (January 30, 1972).

[299] Press Summary, *op. cit. supra* note at 5

[300] See Berke and Callahan, *op. cit. supra note* at 65–71. The authors of this analysis cautioned: "The foregoing tax expenditure analysis should, we believe, be seen as a warning to those who uncritically hailed the new cases and proposals that call for State assumption of educational costs by proportional taxes and a reduction of expenditure disparities." *Id.* at 71.

[301] It should be noted, however, apart from any effect the wealth free formula has on the absolute amount of funds alloted the cities, the cities have something to gain because use of such a formula would reduce the large differentials in educational expenditures between the cities and nearby suburbs. Competition with wealthy suburban areas for better teachers has been an important source of the cities' high costs for education. See Myers, *op. cit. supra* note at 41.

1. *Added Educational Costs of Cities.*

Higher than average costs strain the budgets of the city schools. Higher teacher salaries, the largest budget item,[302] are caused by a stable and mature teaching staff at the top of the salary schedule and aggressive teacher union acitvity. For example, Detroit offered a beginning teacher salary in 1968–69 of $7,500. The average for 35 surrounding suburban district was $6,922.[303] Big cities also usually pay higher wages to nonprofessional workers.

Urban school districts must pay high prices for land acquisition. Urban land is scarce and therefore expensive; in the outlying areas, less expensive undeveloped land can often be found. In 1967 Detroit paid an average price per acre for school sites in excess of $100,000; surrounding suburban districts only paid approximately $6,000 per acre.[304] In the twenty-five largest cities average land costs per acre are $658,000—in their contiguous suburbs, $3,500.[305] City school districts also have higher insurance rates, vandalism costs, and maintenance costs for the older school buildings.[306]

2. *Special Educational Problems of the Cities.*

Equal per pupil distribution of education funds, therefore, would be inequitable for the cities because it does not take account of higher urban costs. Nor does it take account of the special problems of educating the large number of disadvantaged minority and low-income children found in the cities. James Kelly, a specialist in public education, has said of such children: "Their verbal skills may be severely limited; their motivation to do school work may be inadequate; their attitudes may be inappropriate to the traditional classroom context."[307] That extra needs require additional expenditures was noted by the court in *Robinson v. Cahill:* "It is now recognized that children from lower socio-economic level homes require more educational attention if they are to progress normally through school. When the additional compensatory education is provided, it results in *substantially higher costs.*" (Emphasis in original.)[308]

Large populations of minorities and poor are found in the central cities. In the 37 largest metropolitan areas, central cities average more than 20 percent black population, while outlying areas have approximately 5 percent.[309] The percentage of black students in the schools is considerably higher than in the general population in the cities due to the higher proportion of white students in nonpublic schools and because of larger proportions of nonwhite families with children in core cities.[310] Approximately half the black school children in the country are enrolled in the Nation's 100 largest systems,[311] located primarily in the cities. In the five Southwestern States of Arizona, Texas, Colorado, California and New Mexico, 80 percent of the Mexican Americans lived in cities in 1960.[312] Thus, most Mexican American children also probably are enrolled in city school systems.

3. *Higher Noneducational Costs of the Cities.*

A strict application of a wealth free formula that provides equal per pupil expenditures also fails to take account of the additional noneducational services that cities must support from their property tax revenues. "Municipal overburden" is the term used to express the cities' greater needs for general public services such as health, public safety, sanitation, public works, transportation, public welfare, public housing, and recreation.[313] Due to municipal overburden, cities only devote approximately 30 percent of their budgets to their schools, as compared to more than 50 percent by the suburbs.[314] While central cities in the largest metropolitan areas average $600 per capita in total local public expenditures for all services, outside central city areas in those metropolitan areas total expenditures average only $419 per person.[315]

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[302] A typical public school district spends approximately two-thirds of its annual budget on teachers' salaries. See Schoettle, *op. cit. supra* note at 1359.

[303] See Report of the Commissioner's Ad Hoc Group on School Finance, Department of Health, Education, and Welfare, *Equal Educational Opportunity Hearings*, pt. 16D-3 at S372 (1971). See also Berke and Callahan *op. cit. supra* note at 52.

[304] Report of the Commissioner's Ad Hoc Group on School Finance *op. cit. supra* note at S372.

[305] *Ibid.*

[306] See also Testimony of Dr. Mark Shedd, *Equal Educational Opportunity Hearings*, pt. 16A at 6609–6613.

[307] J. Kelly, "Judicial Reform of Educational Finance", *Equal Educational Opportunity Hearings* at 7468 (1971).

[308] *Robinson v. Cahill op. cit. supra* note at 52.

[309] Berke and Callahan, *op. cit. supra* note at 51.

[310] *Ibid.*

[311] Washington Post, Nov. 28, 1971.

[312] See U.S. Department of Commerce, Bureau of Census, *We The Mexican Americans (Nosotros Los México Americanos)* 6 (1970).

The financial disadvantage imposed on the cities by municipal overburden is illustrated by several specific examples. A study of Detroit and its 19 suburbs showed that when all calls on local property taxes are taken into consideration, Detroit has the highest local tax rate; Detroit's tax rate for schools alone, however, is at the bottom of the list. In Baltimore, one-third of the total local budget goes for schools, while Baltimore County can devote 56 percent of its local budget for schools. In Boston, schools get 23 percent of the total budget, while in the neighboring suburb of Lexington, the figure is 81 percent.[316]

4. *Adjusting for the Needs of the Cities.*

The school finance decisions, however, do not require a system of school finance that will be disadvantageous to the cities. What is proscribed is the distribution of educational resources on the basis of district wealth. The States could employ wealth free formula that take account of the higher costs in the city, the need for greater funds to educate the disadvantaged, and the problem of municipal overburden. If the State formula distributed education funds on the basis of a set amount per pupil, it could weigh the calculation of the number of pupils to compensate for higher costs and greater needs in the cities. If it were determined, for instance, that cities must pay 25 percent more than the statewide average for educational goods and services, then each child in the city would count as 1.25 in the calculation of the total number of pupils. Educational need could be measured in a variety of ways including the number of children receiving AFDC, a program of aid for poor dependent children, or the number of children testing below a certain score on a statewide achievement test. Each pupil receiving AFDC or scoring below a certain score could be counted as 2 in determining the total number of pupils on which aid may be calculated.[317]

The cities would receive additional funds under either of the above measures of needs. A study of New York State shows that when AFDC is used to determine need, cities have more than three times the proportion of pupils needing more extensive services, and that when need is determined by test scores, the cities have more than twice as many disadvantaged children as noncity districts.[318]

Taking municipal overload into account would probably involve a more complex formula. One manner of compensating cities would be to make contiguous areas that use municipal services pay a share of their costs.[319] If the State's new wealth free system involves a statewide property tax, municipal overburden could be recognized by imposing on the cities a lower than average tax rate for educational revenue.[320]

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[313] See U.S. Commission on Civil Rights *Racial Isolation in the Public Schools*, 26–27 (1967): ". . . [C]ities spend a third more per capita for welfare and two times more per capita for public safety than suburbs, while suburbs spend more than half again as much per capita for education. Suburbs spend nearly twice the proportion of their total budget upon education as the cities. The greater competition for tax dollars in cities seriously weakens their capacity to support education. Even though school revenues are derived from property tax levies, which in theory are often independent of other principal taxes, city school authorities must take this greater competition into account in their proposals for revenue increases."

[314] Berke and Callahan, *op. cit. supra* note at 54.

[315] *Id.* at 53.

[316] Myers, *op. cit. supra* note at 40. See Berke and Callahan *op. cit. supra* note at 54 for a Table comparing the 37 largest metropolitan areas with their central cities in regard to education expenditures as a percent of total expenditures for the years 1957 and 1970. The table shows that a consistently higher percentage of the central cities' budgets goes for noneducational expenditures. See also Dimond, "Serrano: A Victory of Sorts for Ethics, Not Necessarily for Education", 2 Yale Rev. of Law and Soc. Action 133, 135 (1971).

[317] In *Robinson v. Cahill, op. cit. supra* note at 45 and 46, the court discussed a recently enacted New Jersey school finance law, the Bateman Act, which took account of educational needs by assigning AFDC children an additional .75 units in determining the number of children for the school district. Although the court approved of taking needs into account, it found the Bateman Act inadequate in other respects.

[318] Berke and Callahan, *op. cit. supra* note at 59. In the study disadvantaged children included those scoring at least two grade levels behind the state norm.

[319] In *Bradley v. The School Board of the City of Richmond* C.A. No. 3353 (E.D. Vir. 1972) the court ordered the consolidation of Richmond and its two contiguous counties and noted the manner in which communities bordering on cities benefit from their services. *Id.* at 260–61 (mimeographed opinion).

Two prestigious commissions on school finance—the President's Commission on School Finance and the Fleischmann Commission in New York—recently issued reports recognizing the special financial problems of the cities and recommending that differences in costs and needs be included in any new distribution formulas.[321]

B. *Impact on the Suburbs and Rural Areas*

Wealthy suburban areas might suffer under a wealth free formula that provided equal expenditures for all students. Because of the high assessed property values in these areas, they raise substantial revenues at relatively low tax rates. Under a system where district wealth is not the determinant of educational expenditures, the suburban areas lose their former advantage. In this respect, a wealth free school finance formula would affect wealthy suburban areas in the same manner as cities with high assessed property values. As we have shown, such cities would receive less educational dollars despite a higher tax rate. Rural areas, on the other hand, have relatively low property values.[322] Consequently, they undoubtedly will receive more educational funds under a wealth free system of school finance.

Reducing educational expenditures where they now are high presents obvious political problems. Districts currently spending substantial sums on education would oppose any formula that reduced their expenditures at the same time increasing their taxes. One way to avoid this problem is by substantially increasing overall State spending for education. This was the approach of the Fleischmann Commission in New York which recommended a substantial increase in overall educational expenditures and a five-year "phasing in" period in which the spending to the poorer districts is leveled upward to that of the wealthier districts.

C. *Impact on Minority Group Children and the Poor*

The implication for minority group children of the strict application of a wealth free formula of distribution is problematic. Minority group children live primarily in majority group districts.[323] The fate of either majority or minority group living within the same district is dependent upon the district's characteristics—whether it is urban, rural or wealthy. Since, however, most minority group children reside in cities,[324] implementation of a strict wealth free system will disadvantage them to the same extent as the cities where they live.[325] For minority group children residing in rural areas, however, the results will be beneficial.

The implications of a wealth free system for the poor also are dependent upon the characteristics of their particular districts. The large concentrations of urban poor would receive lesser amounts for education. On the other hand, those living in the rural areas would gain.

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[320] See Coons, Clune & Sugarman, *Private Wealth and Public Education* 232–242 (1970), for a more thorough discussion of how a distribution formula can take into account municipal overburden, particularly under the power equalizing model of distribution.

[321] On March 6, 1972, the President's Commission on School Finance issued its Final Report, a product of two years work and thirty-two volumes of studies. The Report discussed the acute problems of school finance faced by the cities. In this regard the Commission made the following recommendations: ". . . that State budgetary and allocation criteria include differentials based on educational need, such as the increased costs of educating the handicapped and disadvantaged, and on variations in educational costs within various parts of the State." Final Report of the President's Commission on School Finance, "Schools, People, & Money" 36 (1972). "The Commission recommends the initiation by the Federal Government of an Urban Education Assistance Program designed to provide emergency financial aid on a matching basis over a period of at least 5 years, to help large central city public and nonpublic schools . . . ." *Id.* at 44.

On January 30, 1972, the New York State Commission on the Quality, Cost, and Financing of Elementary and Secondary Education (the Fleischmann Commission) released the first of three chapters of its Report. As a general principle of support distribution, the Commission set forth the following proposition: equal sums of money should be made available for each student, unless a valid educational reason is found for spending some different amount. The Commission, however, recommended that the distribution formula be weighted to provide additional funds for children having demonstrable learning problems. Press Summary, New York State Commission on the Quality, Cost, and Financing of Elementary and Secondary Education at 4 (June 30, 1972).

[322] Berke and Callahan, *op. cit. supra* note at 61; Berke and Kelly, *op. cit. supra* note at 16.

[323] See note *supra*.

[324] See note *supra*.

[325] See also Kirp and Yudof, "Serrano in the Political Arena", 2 Yale Rev. of Law and Social Action 143, 145–46 (1971).

D. *Alternative Systems of School Financing.*

We have described the effects on various groups of children of the implementation of a wealth free system which allots equal expenditures for all children throughout the State. The school finance court decisions, however, do not mandate such a system. The proscribe the use of district wealth as a determinant of education expenditures. The particular choice of a wealth free system of school finance is left to the legislatures.

The range of possible wealth free systems is broad. We will describe five of the basic models. Modifications and various combinations of these models form numerous other models.

The first model is the abolition of local school districts and placement of all school administration and financing on a statewide basis. Another approach is for the State to raise all funds and distribute them to the local school districts for administration.[326] A third alternative is for the State to reorganize existing districts to create new districts with equal tax bases.[327]

Another approach, called percentage equalizing, compensates for difference in local revenue capacity by matching locally raised funds with State funds in a ratio inversely related to district wealth.[328] This method is similar to the widely used foundation plans that attempt to reduce local financing discrepancies with equalizing State grants. It provides, however, local districts with financial incentive and full equalization at any level of spending.

Finally, there is the system proposed by Coons, Clune, and Sugarman, of district power equalizing—a system that allows differential expenditures among school districts, while removing the effect of differential tax bases on the expenditures.[329]

Under district power equalizing the State would determine how much each district will be permitted per pupil for each level of tax effort. Districts making the effort but not raising the amount would be supplemented by the State. Districts raising over the set amount would give their excess to the State.

This method is illustrated in the following chart:

Local tax rate:	*Permissible per pupil expenditure*
10 million	$500
11 million	550
12 million	600
29 million	1,450
30 million	1,500

The educational expenditures permitted a particular district is a function of the chosen local tax rate, not the district wealth. Consequently, if two districts, whatever their relative wealth established property taxes at the same rate, they would receive equal per-pupil revenues from the State.[330]

The different alternatives have various attributes and deficiencies.

Abolition of local school districts and placement of all school administration and financing on a statewide basis runs counter to the American preference and tradition for local decision-making and administration in the area of education.[331] The alternative of reorganizing existing districts to create new districts with relatively equal tax bases has the virtue of preserving the traditional method of school finance minus its source of financial inequalities.[332] There are several difficult problems with this approach, however. For one thing it may require monstrous gerrymandering that would in many instances create geographic entities virtually impossible to administer. For another thing, changes in income distribution would almost certainly require periodic redistricting.[333] Furthermore, this model would permit wide variation in educational expenditures per child depending at the whim of the child's parents and district neighbors—the rate at which they choose to tax themselves.

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[326] See, *e.g.*, Berke and Kelly, *op. cit. supra* note at 33; Comment, "The Evolution of Equal Protection: Education, Municipal Services, and Wealth", *op. cit. supra* note at 193–194.

[327] See, *e.g.*, Final Report, The President's Commission on School Finance, *Schools, People, and Money* 31–32 (1972).

[328] See *e.g.*, Comment "The Evolution of Equal Protection: Education, Municipal Services, and Wealth", *op. cit. supra* note at 187; See also Coons, Clune and Sugarman, *op. cit. supra* note at 316.

[329] See Soons, Clune and Sugarman, *Private Wealth and Public Education* ch. 6 (1970).

[330] See Coons, Clune and Sugarman, *op. cit. supra* note at 319–320

[331] Coons, Clune and Sugarman, *Private Wealth and Public Education* 14–20 (1970).

[332] See Schoettle, "The Equal Protection Clause in Public Education", 71 Col. L. Rev. 1355 at 1411 where the author suggests that in the area of school finance inequality, courts should limit their intrusion to requiring a rational distribution of tax base resources for districts. Such action would also have the effect of removing financial disparities between districts in providing other municipal services.

[333] Final Report, President's Commission on School Finance, *op. cit. supra* note at 31, 32.

A problem with the percentage equalizing model is that in practice the States that have employed it have imposed restraints that substantially reduce the theoretical equalizing effects.[334] Furthermore, percentage equalizing, like district reorganization, would permit wide variations in educational expenditures for children depending on the tax rate chosen by the district.

"Power equalizing" theoretically has the virtue of allowing local districts to choose various levels of educational expenditures according to their relative interest in education. It would be very difficult, however, to devise a formula to measure true tax effort.[335] Furthermore as with the previous two models, under "power equalizing" children could receive widely divergent educational resources.

The full state funding model would likely provide a more even distribution of educational expenditures, although the particular formula chosen could provide for nonwealth based differentials such as needs and costs (as could all the other models). Under this model funding would be on the state level; educational policy making, however, could be left to the localities. The full State funding approach was recently recommended by the President's Commission on School Finance and the Fleischmann Commission in New York State.[336]

Whatever approaches the various states adopt in devising wealth free systems of school finance, we can be sure that legislatures throughout the Nation will be grappling with the issue for some time to come. The commentators and lawyers involved in the cases already have begun to prognosticate about the likely legislative responses. Sara Carey of the Lawyers' Committee for Civil Rights Under Law cautions "State legislatures don't move often. When they do, unless we are careful, we can be locked into a formula we don't like for over a decade."[337] Joel Berke and John Callahan fear "that the direction that change may take in the post-*Serrano* period will be that of providing essentially equal expenditures for all children financed from a broad based statewide tax system of proportional rather than progressive rates."[338]

Coons, Clune, and Sugarman, predict that most legislatures will cooperate with a judicial decree ordering a wealth free system of finance. "The blessings of *Serrano* are too obvious and the risks too remote."[339] They also suggest the possibility of a favorable Supreme Court decision on school finance touching off "an explosion of creativity in the structure of education."[340]

Paul Dimond, an attorney at the Harvard Center for Law and Education, does not share this optimism. Rather than act as laboratories of democracy by experimenting with various creative models of school finance, Mr. Dimond says it is "more likely that the state's dirve for unifority will as usual triumph, and all the states with no good reason will jump for the same remedy."[341]

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[334] Some of the equalizing restraints imposed are enumerated in Weiss, *Existing Disparities in Public School Finance and Proposals for Reform* (Fed. Reserve Bank of Boston, Research Rep. No. 46, 1970), cited at Comment "The Evolution of Equal Protection: Education, Municipal Services, and Wealth" *op. cit. supra* note at 187, 188.

[335] Sugarman stated, "I would be the first to agree that while it is quite easy to suggest that wealth should be eliminated as a basis for supporting schools, as a practical matter determining what equal effort really is is very complex indeed." Quoted in Meyer, "Second Thoughts on Meaning of Serrano," *op. cit. supra* note at 41.

[336] The President's Commission concluded: "The Commission recommends that the state governments assume responsibility for financing substantially all of the non-Federal outlays for public elementary and secondary education, with local supplements permitted up to a level not to exceed 10 percent of the state allocation." Final Report *op. cit. supra* note at 36.

The local supplement feature recommended by the Commission would reserve to the localities some power to determine expenditures on the basis of wealth. This is the very characteristic of the present system of school finance that is proscribed by the *Serrano* line of decisions. Neil McElroy, Chairman of the Commission, said that this local payment might fail to meet court requirements. *Washington Post*, March 7, 1972, at 1, Col. 1. The only way that it could pass muster under *Serrano* would be on the basis that the 10 percent option was so small that the system remains substantially wealth-free.

The New York State Commission on the Quality, Cost, and Financing of Elementary and Secondary Education (the Fleischmann Commission) called for full state financing of public elementary and secondary education in order to assure that each student is provided equal educational opportunity and that the quality of his education does not depend upon the property values in the area where he happens to live. The 18 member Commission said that its position on centralizing the funding of the schools "is not inconsistent with the Commission's desire to *strengthen* local control over many educatonal matters . . . (for) it is clearly possible to have centralized financing and decentralized policymaking." Press Summary *op. cit. supra* note.

[337] Quoted in Meyer, "Second Thoughts on the Meaning of Serrano" *op. cit. supra* note at 41.

[338] Berke and Callahan, *op. cit. supra* note at 65–66.

[339] Coons et al. "A First Appraisal of Serrano," *op. cit. supra* at 118.

[340] Coons et al. "Educational Opportunity: A Workable Constitutional Test For State Financial Structures." *op. cit. supra* note at 420.

VI. SOME POSSIBLE RAMIFICATIONS OF EDUCATIONAL FINANCE REFORM

A. *On Land Use*

Adoption of wealth free systems of school finance is sure to have extensive impact in the area of education. Though less obvious, impact would also be widespread in other areas of American life. Its adoption would remove an important economic obstacle to location of low-and-moderate income housing in the suburbs. Suburban residents would no longer be able to fight such housing on the grounds that it would bankrupt the municipality because the cost of educating the children who would live in such housing would far exceed the property tax income derived from that housing. Removal of the "respectable" economic justification hopefully would provide the impetus to open up the suburbs to all economic classes.[342]

A related land use problem that would be affected by the adoption of a wealth free system of school finance is the wooing of commercial and industrial enterprise from the cities by suburban communities to gain taxable property. Such action currently has the effect of putting jobs out of reach of the urban residents who so desperately need them and dotting esthetically pleasing landscapes with offices and factory buildings.

Educational finance reform also could have the effect of decreasing rural migration to the cities. Many people who prefer to live in the rural areas feel that inadequate and underfinanced schools in rural areas cheat their children of educational opportunities.

B. *On School District Organization*

Community control proponents might find support in the adoption of a wealth free system because poor communities would no longer need to expand the level of educational expenditures by combining with richer areas into a single district. One commentator has said "[i]f fragmentation no longer means diminution of fiscal capacity, the community control movement has become economically credible. It is now difficult to justify the independence of a middle class suburb while rejecting community demands in the inner city."[343]

The extent to which the school finance cases will impede or stimulate the consolidation of school districts depends upon the financing scheme adopted. A financing scheme that provides aid independent of local tax effort or local tax base might stimulate rich districts that are inefficiently small from an administrative point of view to consolidate with other districts. By remaining small, these districts have managed to provide ample funds for education at a low tax rate. They have resisted any programs that would increase their educational costs—such as public housing projects or consolidation with areas with low tax bases. Once a district's tax base is removed as the determinant of its educational expenditure, rich districts might be less opposed to consolidating with other districts if this results in a more efficient educational system.

On the other hand, a wealth free system of school finance will remove the incentive for poor districts to consolidate with richer ones to obtain a large joint tax base. It has been noted that

> [*Serrano*] closes out the long movement for district consolidation by subsuming its rationale. If tax bases in a decentralized system *must* be effectively equivalent through power equalizing, there is no point in amalgamating districts beyond the point of increasing educational efficiency. Currently district gigantism is receiving low grades in this respect. . . . If fragmentation no longer means diminution of fiscal capacity . . . *prima facie* [*Serrano*] will make metropolitan integration plans more difficult.[344]

But, as we have noted, not all the proposed methods of equalizing school finance operate within the present system of school districts; not all seek to equalize aid within the present framework. Some proposals call for reorganizing school districts so as to equalize their tax bases. This would provide school districts with equal capacity to raise educational dollars. Some of the recent school finance cases recognize district reorganization or consolidation as a possible and feasible solution to inequities in school financing.

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[341] P. Dimond, "Serrano: A Victory of Sorts For Ethnics, Not Necessarily For Education," 2 Yale Rev. of Law and Social Action 133 at 137 (1971).

[342] Introduction, "Who Pays for Tomorrow's Schools: The Emerging Issues of School Finance Equalization" 2 Yale Rev. of Law and Social Action 109 (1971).

[343] Coons, Clune and Sugarman, "A First Appraisal of Serrano", *op. cit. supra* note at 12 n. 54.

[344] Coons, Clune and Sugarman, "A First Appraisal of Serrano", 2 Yale Rev. of Law and Soc. Action 111, 121 n. 54 (2971).

For example, in *Rodriguez* v. *San Antonio Independent School District*[345] as an alternative to ordering that the State restructure its educational finance system to assure that funds are distributed without regard to a district's wealth the plaintiffs requested that the court order "the defendant school districts in Bexar County be abolished and that the county School Trustees establish new boundary lines for school districts or districts of approximately equal taxable property per child."[346]

Similarly, in *Robinson* v. *Cahill*,[347] the plaintiffs requested that the court order the defendants "to change the boundary lines of the districts in a way that will equalize the amount of tax base per student. . . ."[348]

The authority of the courts to order school district consolidation has been an issue in school desegration cases. Most recently, in *Bradley* v. *The School Board of the City of Richmond, Virginia et al.*[349] Richmond and its two contigious counties of Henrico and Chesterfield were ordered to adopt a metropolitan student assignment plan that would consolidate city and county school systems in order to achieve racial integration in the schools of the three political subdivisions. The court's reasoning in support of its order might well be equally applicable to cases where consolidation is requested to remedy financial disparities. The court regarded consolidation as the only feasible solution and said:

> "At present the disparities are so great that the only remedy promising immediate success—not to speak of stable solutions—involves crossing these [county] lines."[350]

Referring to other cases in which school consolidation was required or the creation of separate districts was prohibited in school desegregation cases,[351] the court concluded there was ample precedent to support its order and said:

> The equal protection clause has required far greater inroads on local government structure than the relief sought here, which is attainable without deviating from state statutory forms. Compare *Reynolds* v. *Sims*, 377 U.S. 533 (1964); *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960); *Serrano* v. *Priest*, 40 U.S. L. W. 2128 (Calif. Sup. Ct. Aug. 30, 1971. . . . In any case, if political boundaries amount to insuperable obstacles to desegregation because of structural reasons, such obstacles are self imposed.[352]

School district consolidation also has been an issue in the Detroit school segregation case, *Bradley* v. *Milliken*[353] where the court concluded that *de jure* segregation existed in the Detroit schools. The court emphasized that the obligations imposed by the Fourteenth Amendment fall upon the State,[354] that Michigan's central educational administrators have extensive powers over the State's educational system, including that of school district reorganization, and that State law provides mechanisms for annexation and consolidation of school districts. Although the court did not order a merger of school districts, it indicated that such a device would be considered in drawing up its final order.

Accordingly, the ordering of school district consolidation or redistricting as a means of equalizing educational expenditures would be within the authority of a court,[355] and, without question, within the authority of a State legislature. Were a court to seek to equalize, through consolidation, the ability of school districts to raise funds, it would be important for the court to recognize the other demands on a district's tax base besides funds for education. As we have shown, "municipal overburden" places great strains on the revenues raised by cities,

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[345] C.A. No. 680175–5A (W.D. Tex. 1971).

[346] See appendix F.

[347] No. L–18704–67 (Super. Ct. N.J. 1971).

[348] See appendix F.

[349] C.A. No. 3353 (E.D. Vir. 1972).

[350] *Id.* at 60 (mimeographed opinion).

[351] *Id.* at 67–81.

[352] *Id.* at 64.

[353] C. A. No. 35257 (E. D. Mich. 1971).

[354] See also note *supra*.

[355] See Schoettle, *op. cit. supra* note at 1411: "The scheme by which tax bases are arbitrarily parceled out among different municipal jurisdictions, while perhaps necessary in an earlier era when records and data were not available, presently has no reasonable justification. . . . In this respect, the present inequalities are analogous to the unequal distributions of voting power that preceded *Baker* v. *Carr*."

In order to insure that districts have eqaul capacity to raise funds for education, the size of the district's tax base must be adjusted to insure that other unequal demands are taken into account.[356] Thus, a system designed to eliminate fiscal disparities between districts would not necessarily result in uniform tax bases; the tax bases would have to be adjusted to provide adequate funds to meet each district's particular needs.

VII. THE SCHOOL FINANCE CASES: RELATED PROBLEMS

A. *The Property Tax*

A frequent misinterpretation of the school finance cases is that they invalidate the use of the local property tax as a source of revenue for educational finance. The focus of the cases, however, is on unequal educational expenditures; property taxes are important to the decisions only as they relate to unequal expenditures.[357] The school finance cases permit continued reliance on the property tax so long as the distribution of revenues collected are free of any wealth criteria.

Nevertheless, the school finance cases may provide an important impetus for property tax reform. These cases highlight the extensive use or property taxes and they make a dramatic and reasoned appeal for the removal of financial inequities in school finance. Further pursuit of dragons of inequity will lead to the lair of the property tax.

Property taxes are the principal local source of revenue for all local government, not just schools.[358] Nationwide it produces $33 billion in tax revenues.[359] 95 percent of all education tax revenue comes from the property tax—$17.4 billion, out of a total of $18.4 billion.[360] Although two-thirds of the states require that property be assessed at its full value, according to 1962 data, locally assessed real property averaged less than 30 percent of market value.[361] Even more disparate are the huge variations between and within assessment districts.[362]

The property tax has three major deficiencies as a source of local school support. First, it is a poor measure of ability to pay since today wealth is measured in terms more than the amount of real estate a person may own.[363] Second it is regressive—families in the lower income brackets pay a larger percentage in property taxes than do those in higher brackets.[364] Thirdly, improper administration of the property tax in most states has resulted in a host of further inequities.[365] Another problem with property tax administration is the tendency of many assessors to allow the ratio of assessed values to full market values to decline,[366] thus reducing the capacity of the school district to tax local funds. For example, according to one estimate, the assessment ratio in the city of Detroit declined from 90 percent in 1930 to about 50 percent in 1960.[367] A final problem is the unequal distribution of tax exempt property, such as Federal government property and that of church and charitable organizations.[368] These problems of property tax administration recently were summarized:

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[356] See Schoettle, *ibid.*: "Though education accounts for the major expenditures of local governments, there is no justification—once the focus has been shifted from education to fiscal disparities—for restricting the requirement of a rational distribution of tax base to school districts. Other maldistributions are equally significant and equally offensive." See also *Robinson* v. *Cahill, op. cit. supra* note a 66: "Even if districts were better equalized by guaranteed valuations, the guarantees do not take into consideration 'municipal and county overload'. . . . Poor districts have other competing needs for local revenue."

[357] In *Serrano* the court upheld the plaintiff parents' cause of action which in addition to incorporating the children's claim, also alleged that under the current financing scheme they are required to pay a higher rate than taxpayers in many other districts in order to secure for their children the same or lesser educational opportunities. The court upheld this second claim on the basis that it seeks to prevent public officers from acting under an allegedly void law and "if the * * * law is unconstitutional, then county officials may be enjoined from spending their time carrying out its provisions." (citations omitted) *Serrano* v. *Priest op. cit. supra* note at 625. Therefore, the parents injunctive claim against public officials apparently depends on a favorable holding in regard to the children's claim of differential educational expenditures based on wealth. The court does not hold that the system of collection and administration of the property tax is itself invalid.

Further, the court's statement in the second line of its opinion also shows that discriminatory expenditures, not property taxes, were the evil proscribed by the court. "We have determined that this function scheme invidiously discriminates against the poor because it makes the quality of a child's education a function of the wealth of his parents and neighbors." *Id.* at 604.

It also should be noted that the parents' cause of action, complaining of higher property taxes, if made independent of the children's claim for equal expenditures, would not fall under the fundamental interest doctrine used by the court in reaching its decision.

In *Hollins* v. *Shofstall op. cit. supra* note at 5, 6 the court apparently upholds the taxpayers' claim. Although the court's reasoning and holding is unclear on this issue, it seems to follow *Serrano* in linking taxation with expenditures in a way that does not require the elimination of the property tax.

[358] J. Kelly, *Equal Educational Opportunity Hearings*, pt. 16D–1 at 7470.

[359] S. Carey, *Id*, pt. 16B at 6875.

[360] Final Report, Pres. Comm'n on School Finance, *op. cit. supra* note at 27.

[361] Statement of J. Kelly, *Equal Educational Opportunity Hearings*, pt. 16D–1 at 7470.

[362] For instance, this Report found that in Texas assessments are generally higher in predominately Mexican American districts than in primarily Anglo school districts. Every real dollar's worth of property in districts 80 percent or more Chicano, for example, is valued at about 35 cents. In districts 20 to 30 percent Mexican American the same dollar's worth of property is valued at 25 cents. Report at 37. "The 1962 Census of Governments disclosed that in over two-thirds of the assessment units studied the top quarter of parcels in assessment ratio were assessed on the average at more than twice the ratio for the lowest quarter." J. Kelly, *Equal Educational Opportunity Hearings*, pt. 16D–1, at 7470.

> Highly unsatisfactory administration of the property tax, including failure to use modern appraisal methods or reassess at frequent intervals, has resulted in gross inequity in relative tax burden. Local governments "need to improve local property tax administration to remove the haphazard way in which the tax applies to properties of equal values." Critics have claimed, for example, that proper assessment of big business could reduce local property taxes on residences and small businesses by 25% while still increasing local property tax revenues. "All of which is to say that property value as a measure of wealth for purposes of equalization has all of the problems inherent in the property tax itself."[369]

Property tax reform is sorely needed. The Federal and State governments are showing interest as taxpayers across the country register their disapproval by refusing to support property-tax financed municipal and educational programs.[370] In the meantime property tax reform is being pressed in the courts.

In *Russman* v. *Luckett*,[371] the Kentucky Court of Appeals (the State's highest court) held that the land assessment practices were in violation of the State laws and constitution. Plaintiff, taxpayers, parents of school children, and students, sought a declaratory judgment and injunctive relief against tax officials. The court upheld their right to sue on the basis that "a justiciable controversy is presented" and "[t]here are no other adequate remedies which may be invoked by these plaintiffs."[372] The court noted that in the different taxing districts real estate and tangible personal property were assessed at percentages ranging from 30 to 12½ percent of value and that the statewide median real estate assessment ratio was approximately 27 percent. The problem with the system was said by the court to be that it made for disparities in the tax burden upon taxpayers in different counties and taxing districts, and that it produced extreme fund raising difficulties for taxing authorities whose maximum tax rates were limited. More significant to the court was the fact that the current method of assessment was in violation of a provision of the Kentucky Constitution and implementing statutes requiring assessment at 100 percent of fair cash value. The court rejected as "appalling" the defendant's argument that the constitutional provision was impliedly repealed because of its continued violation by public officials.[373] The court also rejected the defendant's argument that court decisions had nullified the constitutional provision and its implementing statutes by substituting the test of uniformity in place of fair cash value. Finding further that the question of assessment was not a discretionary matter with the commissioner of revenue, the court ordered compliance by the beginning of the following calendar year, approximately six months following the decision. Similar suits have been brought successfully in other States.[374]

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[363] "When we were a Nation largely of farmers and home owners, real estate comprised the bulk of the wealth and offered a valid basis for taxation. Wealth could reasonably be measured by holdings of real estate. * * *

"But the growth of manufacturing and other industries, the relative decline in the importance of agriculture, the migrations to cities and to suburbia have created enormous imbalances in this traditional system. Real estate is no longer the fundamental measure of the ability of people to pay for government services or of their need for them." *Id.* at 28 and 29. See also Comment, "The Evolution of Equal Protection: Education, Municipal Services, and Wealth" *op. cit. supra* note at 111.

[364] D. Netzer, *Economics of the Property Tax*, at 46 (1966); J. Burkhead, *State and Local Taxes For Public Education* 28 (1963); This Report at 47, 48.

[365] D. Netzer, *op. sit. supra* not at 173; Advisory Commission on Intergovernmental Relations, *State Aid to Local Government* 35 (1969).

[366] *Ibid.*

[367] *Ibid.*

[368] S. Carey, *Equal Educational Opportunity Hearings*, pt. 16B, at 6875. Many of the Nation's cities which are suffering the greatest fiscal decline have 30–50 percent of their property exempt. *Id.* 6875 n. 1. See also testimony of Ralph Nader, *Equal Educational Opportunities Hearings*, pt. 16B at 6768 where he cited a series of specific examples of powerful corporations extracting local property tax concessions and went on to state, "The pattern continues across the country. Our files are filled, Mr. Chairman, with examples and documentation of this explicit means of corporate crime; this willful and knowing refusal to pay the most bare minimum taxes to support local services such as education."

[369] Comment, "The Evolution of Equal Protection: Education, Municipal Services and Wealth," *op. cit. supra* note at 167.

[370] New York Times, *op. cit. supra* note at 4, col. 1. See also *Equal Educational Opportunity Hearings*, pt. 16D-2 at 8015.

[371] 391 S.W. 2d 694 (Ky. 1965).

[372] *Id.* at 696.

On June 29, 1971, a three judge federal district court held that assessment practices and laws in Alabama were in violation of the Federal Constitution. *Weissinger* v. *Boswell*.[375]

Plaintiffs attacked two separate aspects of the assessment process: first, the failure of the State officials to equalize assessment rates violated the Alabama Constitution and laws and also the due process and equal protection clause of the 14th Amendment of the United States Constitution; and second, the Alabama statute granting State and local tax officials wide discretion in setting assessment rates was so vague and indefinite that it too violated the Federal due process and equal protection guarantees. This statute was also attacked on the ground that it was contrary to the provision of the Alabama Constitution requiring that all bills for raising revenue originate in the State House of Representatives.

The court found that the Alabama constitutional provision requiring that property be assessed at value and that the property of private corporations and individuals be taxed at the same rate have been consistently interpreted by the Supreme Court of Alabama as requiring "uniformity and equality among all taxpayers, private corporations, associations and individuals alike, both as to ratio and percentage of taxation and also as to rate of taxation." [376] Nevertheless, the court noted that the median assessment ratio for the State of Alabama was approximately 16.9 percent of fair market value and the median ratios for individual counties ranged from lows of 6.7 and 7 percent to highs of 23.1 and 26.8 percent.[377] Such inequality of treatment was found by the court to violate not only the Alabama Constitution but also the due process and equal protection clauses of the 14th Amendment of the Federal Constitution. The court noted that "[w]hile distinctions based on geographic areas are not, in and of themselves, violative of the 14th Amendment ,a state must demonstrate, if it wishes to establish different classes of property based upon different geographic localities . . . that the classification is neither capricious nor arbitrary but rests upon some reasonable consideration of difference or policy." [378] The court was unable to find any legitimate State objective to be served by the vast disparities in the present system.

Plaintiffs' second cause of action attacked the Alabama statute that directed that taxable property within the State be assessed not to exceed thirty percent of its fair market value. The court found that contrary to the Alabama Constitution, the bill creating the statute had originated in the State Senate rather than the State House. Furthermore, the court found the statute to be contrary to the Federal constitution in that it delegated legislative power to an agency without formulating a definite and intelligible standard. Noting that the type of discriminatory treatment found in the assessment practices were deep-seated and of long standing, the court gave the defendant up to a year's time to comply with the mandate of the opinion.

B. *Intradistrict School Disparities*

While the recent school finance cases are likely to produce radical changes in the disparities of educational funds available among school districts, it should be emphasized that these cases do not affect inequities that may exist within particular school districts. One notable demonstration of intradistrict disparities was *Hobson* v. *Hansen*,[379] a case involving the District of Columbia school system. Judge J. Skelly Wright found that in a variety of ways children from lower income families had less educational resources available to them than children from higher income families. Similarly, a New York City Court found that fewer regularly licensed teachers were assigned to the schools in Harlem than to schools in more affluent sections of the city.[380]

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[373] *Id.* at 697.

[374] S. Carey, *Equal Educational Opportunity Hearings*, pt. 16B at 6876. See also *Village of Ridgefield Park* v. *Bergen County Board of Taxation*, 31 N.J. 420, 157 A. 2d 829 (1960); *Bettigole* v. *Assessors of Springfield*, 343 Mass. 223, 178 N.E. 2d 10 (1961); *McNayr* v. *State*, Fla. 166 So. 2d 142 (1964); *State ex rel. Park Investment Co.* v. *Board of Tax Appeals*, 175 Ohio St. 410, 195 N.E. 2d 908 (1964); *Pierce* v. *Green*, 229 Iowa 22, 244 N.W. 237.

[375] 330 F. Supp. 615 (M.D. Ala. 1971).

[376] *Id.* at 620.

[377] *Id.* at 621.

[378] *Id.* at 623 (citations omitted).

Intradistrict disparities also have been identified in Denver. In *Keyes* v. *District Number One*[381]—a case currently pending before the Supreme Court—[382] it was demonstrated that in the schools populated predominately by black and Mexican American students, 23.9 percent of the teachers had had no previous experience in the Denver public schools and 48.16 percent of the faculty held probationary appointments.[383] By contrast, in twenty schools not populated mainly by minority students, only 9.8 percent of the faculty had had no previous experience and only 25.6 percent held probationary appointments.[384]

It generally is believed that intradistrict disparities are a wide-scale problem.[385] Professors Kirp and Yudof have commented:

> There is empirical evidence that school districts allocate substantially fewer dollars to schools in poor and black neighborhoods; indeed, within-district disparities may be as significant as disparities in a given state.[386]

Although cases involving intradistrict disparities involve difficult and expensive matters of proof,[387] there is ample legal precedent to support litigation in this area.[388] Once interdistrict differentials are removed, efforts will be required to eliminate whatever intradistrict disparities exist.

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[379] 269 F. Supp. 401 (D.D.C. 1967), *aff'd. sub. nom. Smuck* v. *Hobson*, 408 F. 2d 175 (D. C. Cir. 1969), *on motion for further relief, Hobson* v. *Hansen*, 327 F. Supp. 844 (D.D.C. 1971).

[380] *In re Skipwith*, 14 Misc. 2d 325, 180 N. Y. S. 2d 852, 866 (Dom. Rel. Ct. 1958); *cf. Dobbins* v. *Virginia*, 198 Vir. 697, 699, 96 S. E. 2d 154, 156 (1957).

[381] 313 F. Supp. 61 (D. Colo. 1970), *rev'd in part*, 445 F. 2d 990 (10th Cir. 1970).

[382] *Cert. granted*, 40 L.W. 3335 (1972).

[383] 313 F. Supp. at 79–80.

[384] *Id.*

[385] See Schoettle, *op. cit. supra* note at 1360–62.

[386] Kirp and Yudof, *op. cit. supra* note at 146. See also Statement of Mark G. Yudof, *Equal Educational Opportunity Hearings*, pt. 16B at 6862, 6866.

[387] See Coons, Clune and Sugarman, "Educational Opportunity: A Workable Constitutional Test for State Financial Structures", 57 Cal. L. Rev. 305, 356 n. 147 (1969).

[388] See Schoettle, *op. cit. supra* note at 1412–1416. See also Comment, "Equal Protection in the Urban Environment: The Right to Equal Municipal Services", 46 Tul. L. Rev. 496 (1972); Horowitz, "Unseparate But Unequal—The Emerging Fourteenth Amendment Issue in School Education", 130 U.C.L.A. L. Rev. 1147 (1966); Abascal, "Municipal Services and Equal Protection", 20 Hastings L. Rev. 1367 (1969). Ratner, "Inter-Neighborhood Denials of Equal Protection in the Provision of Municipal Services", 4 Harv. Civ. Rights—Civ. Lib. L. Rev. 1 (1968).

APPENDIX A

CURRENT EXPENDITURE PER PUPIL IN ADA, PUBLIC ELEMENTARY AND SECONDARY SCHOOLS, BY STATE

State (1)	Expenditure per pupil in ADA, 1970-71 (2)	Percent of U.S. average (3)	Percent change, 1960-61 to 1970-71 (4)
Alaska	$1,429	170.3	156.1
New York	1,370	163.2	134.2
New Jersey	1,088	129.7	122.5
Vermont	1,088	129.7	210.9
Hawaii	1,050	125.1	214.4
Iowa [1]	1,004	119.7	160.1
Connecticut	997	118.8	117.7
Wisconsin	988	117.8	131.4
Maryland	974	116.1	131.9
Delaware	954	113.7	105.2
Rhode Island	951	113.3	125.9
Pennsylvania	948	113.0	124.1
Illinois	937	111.7	92.0
Oregon	935	111.4	104.6
Wyoming	927	110.5	80.2
Washington	873	104.1	103.0
Minnesota	864	103.0	99.1
Michigan	858	102.3	101.4
Montana	858	102.3	99.1
Arizona	825	98.3	101.7
Louisiana	808	96.3	107.7
Nevada	804	95.8	85.7
Virginia	800	95.4	190.9
California	799	95.2	74.8
Colorado	780	93.0	92.6
Ohio	778	92.7	85.7
Kansas	771	91.9	97.7
Florida	765	91.2	138.3
Maine	763	90.9	150.2
Missouri	761	90.7	116.2
Indiana	741	88.3	98.1
Massachusetts	735	87.6	69.0
New Hampshire	729	86.9	98.1
New Mexico	713	85.0	95.9
North Dakota	689	82.1	83.7
South Dakota	688	82.0	85.9
West Virginia	684	81.5	151.5
Nebraska	683	81.4	96.3
South Carolina	656	78.2	185.2
Texas	646	77.0	95.2
Utah	643	76.6	102.2
North Carolina	642	76.5	166.4
Georgia	634	75.6	148.6
Kentucky	621	74.0	150.4
Oklahoma	605	72.1	89.1
Idaho	595	70.9	98.3
Tennessee	590	70.3	152.1
Arkansas	578	68.9	141.3
Mississippi	521	62.1	142.3
Alabama	489	58.3	98.8
United States	839	100.0	113.5

[1] Includes expenditures for area vocational schools and junior colleges.

Source: National Education Association, Research Division, Estimates of School Statistics, 1961-62. Research Report 1961-R22. Washington, D.C.: the Association, 1961. p. 29, 31.

National Education Association, Research Division. Estimates of School Statistics, 1970-71. Research Report 1970-R15. Washington, D.C.: the Association, 1970 .p. 37.

[This table is taken from Berke and Callahan, "Inequities in School Finance 46 (1971) a paper presented at the 1971 Annual Convention of the American Academy for the Advancement of Science and reprinted by the Select Committee on Equal Educational Opportunity, United States Senate, 92nd Cong. 2d Sess. (Comm. Print 1972)]

APPENDIX B

INTRASTATE DISPARITIES IN PER PUPIL EXPENDITURES, 1969-70

	High	Low	Index between high low
Alabama	$581	$344	1, 689
Alaska (Revenue pupils)	1, 810	480	3, 771
Arizona	2, 223	436	5, 099
Arkansas	664	343	1, 936
California	2, 414	569	4, 243
Colorado	2, 801	444	6, 309
Connecticut	1, 311	499	2, 627
Delaware	1, 081	633	1, 708
District of Columbia			
Florida	1, 036	593	1, 747
Georgia	736	365	2, 016
Hawaii			
Idaho	1. 763	474	3, 719
Illinois	2, 295	391	5, 870
Indiana	965	447	2, 159
Iowa	1, 167	592	1, 971
Kansas	1, 831	454	4, 033
Kentucky	885	358	2, 472
Louisiana	892	499	1, 788
Maine	1, 555	229	6, 790
Maryland	1, 037	635	1, 633
Massachusetts	1, 281	515	2, 487
Michigan	1, 364	491	2, 778
Minnesota	903	370	2, 441
Mississippi	825	283	2, 915
Missouri	1, 699	213	7, 977
Montana (average of groups)	1, 716	539	3, 184
Nebraska (average of groups)	1, 175	623	1, 886
Nevada	1, 679	746	2, 251
New Hampshire	1, 191	311	3, 830
New Jersey (1968-69)	1. 485	400	3, 713
New Mexico	1, 183	477	2, 480
New York	1, 889	669	2, 824
North Carolina	733	467	1, 370
North Dakota (county averages)	1. 623	686	2, 336
Ohio	1, 685	413	4, 041
Oklahoma	2, 566	342	7, 503
Oregon	1, 432	399	3, 489
Pennsylvania	1, 401	484	2, 895
Rhode Island	1, 206	531	2, 271
South Carolina	610	397	1, 537
South Dakota	1, 741	350	4, 974
Tennessee	700	315	2, 432
Texas	5, 334	264	20, 205
Utah	1, 515	533	2, 842
Vermont	1, 517	357	4, 249
Virginia	1, 126	441	2, 553
Washington	3, 406	434	7, 848
West Virginia	722	502	1, 438
Wisconsin	1, 432	344	4, 160
Wyoming	14, 554	618	23, 553

For New Jersey data are for fiscal year 1969 since fiscal year 1970 data were not yet available.

For Alaska data represent revenue per pupil.

For Montana and Nebraska data are high and low of average for districts grouped by size.

For North Dakota data are averages of expenditures of all districts within a county.

Data are not fully comparable between States since they are based entirely on what data the individual State included in their expentirure per pupil analysis.

Source: State reports and verbal contacts with State officials.

For New Jersey data are for fiscal year 1969 since fiscal year 1970 data were not yet available. For Alaska data represent revenue per pupil. For Montana and Nebraska data are high and low of average for districts grouped by size. For North Dakota data are average of expenditures of all districts within a county. Data are not fully comparable between States since they are base dentirely on what data the individual State included in their expenditure per pupil analysis.

Source: State reports and verbal contacts with State officials.

Hawaii is the only State that finances education on a statewide basis and consequently does not have the inequities associated with local financing. [This table is taken from Berke and Kelly, "The Financial Aspects of Equality of Educational Opportunity", (1971) reprinted by the Select Committee on Equal Educational Opportunity, United States Senate, 92d Cong. 2d Sess. (Comm. Print 1972)]

Appendix C

COMPARISON OF SELECTED TAX RATES AND EXPENDITURE LEVELS IN SELECTED COUNTIES, 1968-69

County	ADA	Assessed value per ADA	Tax rate	Expenditure per ADA
Alameda:				
Emery unified	586	$100,187	$2.57	$2,223
Newark unified	8,638	6,048	5.65	616
Fresno:				
Coalinga unified	2,640	33,244	2.17	963
Clovis unified	8,144	6,480	4.28	565
Kern:				
Rio Bravo elementary	121	136,271	1.05	1,545
Lamont elementary	1,847	5,971	3.06	533
Los Angeles:				
Beverly Hills unified	5,542	50,885	2.38	1,232
Baldwin Park unified	13,108	3,706	5.48	577

Source: Serrano v. Priest op. cit supra note 10, at 600.

Appendix D

The relationship of district wealth and highest tax effort

(Texas school districts categorized by equalized property value and tax rate required to generate highest yield in all districts)

Categories, market value of taxable property per pupil	*Tax rate needed to equal highest yield (per $100)*
Above $100,000 (10 districts)	$0.64
$100,000 to $50,000 (26 districts)	1.49
$50,000 to $30,000 (30 districts)	2.53
$30,000 to $10,000 (40 districts)	4.88
Below $10,000 (4 districts)	12.83

Source: Policy Institute, Syracuse University Research Corporation, Syracuse, New York.

Appendix E

COMPARISON OF PUPIL TEACHER RATIO IN SELECTED CENTRAL CITIES AND SUBURBS, 1967[1]

City and suburb	Pupil teacher ratio	Per pupil expenditures
Los Angeles	27	$601
Beverly Hills	17	1,192
San Francisco	26	693
Palo Alto	21	984
Chicago	28	571
Evanston	18	757
Detroit	31	530
Grosse Pointe	22	713
St. Louis	30	525
University City	22	747
New York City	20	854
Great Neck	16	1,391
Cleveland	28	559
Cleveland Heights	22	703
Philadelphia	27	617
Lower Marion	20	733

[1] Taken from the Urban Education Task Force Report (Wilson C. Riles, chairman). New York, N.Y.: Praeger Publishers, Inc., 1970.

Source: Gerald Kahn and Warren A. Hughes, "Statistics of Local Public School Systems, 1967," National Center for Educational Statistics, U.S. Office of Education.

[This table is taken from Berke and Kelly, *op. cit. supra* note at 10.]

Statement of Hon. John J. Rooney, a Representative in Congress From the State of New York

Mr. Chairman, and all the distinguished members of this great Committee, I am pleased to be able to present my reasons for introducing and supporting H.R. 14150 which I introduced on last March 28th. This bill provides Federal income tax credits for individuals for tuition paid for dependents in private, nonprofit elementary and secondary schools. The tax credit which is provided by my bill would be 50 percent of the amount of tuition paid for each dependent up to a maximum of $500 per dependent. The tax credit would cover only tuition and would not cover other costs such as transportation, meals and books.

Mr. Chairman, this bill has two purposes. First, it is aimed at relieving the terrible financial burden facing so many parents today and at the same time averting the almost certain collapse of private and parochial school systems all over the country. Educational costs, both public and private are soaring.

The Office of Education estimates that the costs of elementary and secondary education this year will be about $56 billion—a startling increase of $2 billion over last year's costs. This year 51.4 million pupils will attend primary and secondary schools and of that total 5.2 million will be in parochial and other private schools. More than 220,000 persons will be engaged in teaching in private and parochial elementary and secondary schools. As education costs climb many parents are finding themselves facing an impossible burden of supporting the public school system through taxes and a private school through over higher tuition costs. The private and parochial schools on the other hand are at the point where if they raise their tuition to meet costs they will drive away students whose families do not have the financial means to pay the tuition. The threat of the collapse of the private and parochial school systems is a very real one and if it came about it would place an intolerable burden on an already overcrowded public school system. In New York State, according to the latest available figures, there are 841,378 students in 1,967 nonpublic schools at the elementary and secondary level. If these students were suddenly dumped into a system which already has over 3.4 million students it would result in physical and financial chaos. Using estimates arrived at by the Office of Education, it would cost New York almost three quarters of a billion dollars to absorb the pupils now enrolled in private and parochial schools and I see no way that the taxpayers of New York could assume this extra burden on top of the already smothering taxation they now live with.

There is no question that the public school system is and should remain the backbone of our education system. But at the same time if something is not done immediately to help the private and parochial schools around the country they will die and if they do, the education of all our children and their children will suffer greatly. I believe that this bill would provide necessary relief to parents and to private school systems by allowing them to charge fair tuitions and thus grow to fit the need for them. I think that virtually every taxpayer in the country would receive, directly or indirectly, some benefit from this bill. I urge my colleages of the distinguished House Committee on Ways and Means to act rapidly in this matter.

Mr. Chairman, I once again would like to thank you for allowing me to present my views in this matter.

Statement of Hon. James C. Cleveland, a Representative in Congress From the State of New Hampshire

Mr. Chairman, I am honored to be able to present this statement before your Committee to indicate my wholehearted support for legislation which would provide Federal income tax credits to parents who pay tuition for their children in private, non-profit schools.

I sponsored one of these bills before you, H.R. 15325, which would allow a maximum credit of 50 percent of tuition paid, up to a limit of $400 per dependent. This is similar to bills I have sponsored in previous years. It is encouraging that they are now being given serious consideration.

Mr. Chairman, I have long believed that this is probably the most equitable and effective way of relieving the tremendous financial burden now experienced by the parents of children attending these schools. It is also a measure which requires urgent action if we are to save these needed educational institutions.

Previous testimony before this Committee established the fact that a tenth of the children of this country are being educated in non-public schools. This amounts to over five million children in elementary and secondary private and parochial schools. It is obvious to me and the majority of educators in this country that these schools are of vital importance to the future of our educational system as a whole.

The urgency for action is due to mounting pressures which have caused a sharp decline in non-public school enrollment during the last decade. During a time of rapidly growing public school enrollment, private and parochial school enrollment has actually declined by 8.1 percent. Parochial schools suffered the most with a drop of 17 percent. During the last few years, Catholic schools have been closing at a rate of one a day.

The major reason for this decline is economic. The tremendous rise in the cost of living and education has hit the schools and the families of the students very hard. Unfortunately, direct aid to the schools themselves has encountered Constitutional problems. As a matter of fact, I am not too sure direct aid is the answer, even if Constitutional. The eventual strings from the government would defeat our purpose. A tax credit to the parents, on the other hand, should face no such difficulty since the individuals, not the institutions, are the beneficiaries.

IMPORTANCE OF NONPUBLIC SCHOOLS

I should like to address myself now to the question, "Are the non-public schools worth saving?" Mr. Chairman, in my mind the answer is unquestionably, yes! The private and parochial schools in the United States provide critically important competition to the public school system. Private and parochial schools are freer to experiment with new methods of education. Furthermore, they provide a yardstick against which to measure the quality and performance of public schools. In many cases, they also provide an alternative approach to the building of character and the disciplining of mind and manners.

Our country has long been proud of its diversity, and has recognized the value of offering as many alternative roads to individual growth and problem solving as possible. We have realized that only in this way can the best alternative be found for each situation, problem or individual. Private and parochial schools are essential to preservation of diversity in our educational system.

In conclusion, I would like to point out that not only would this country lose socially and educationally, should these schools disappear, but each community would lose economically. At the moment the parents of the children attending non-public schools are willing to pay extra to educate them. If the schools close, everyone will have to pay more taxes to accommodate these children in the public school system. In many communities where this has already occurred, the tax rate has skyrocketed. New schools, materials, and teachers cost money.

In sum, then, non-public schools are beneficial to our educational system. They are worth saving for social, educational and economic reasons. And this legislation is a fair, Constitutional, and viable method of assisting in their survival. I strongly urge favorable action by this Committee. Thank you.

JOINT STATEMENT OF STATE SENATOR GARY BYKER, HUDSONVILLE, MICH., AND JACK ZONDAG, GRAND RAPIDS, MICH.

EQUITY AND JUSTICE IN EDUCATION

Appreciation

Honorable members of the committee, we wish to express our gratitude for the privilege of submitting to you a statement of our views relative to the merits of H.R. 16141, the "Public and Private Education Assistance Act of 1972."

We are fully supportive of the provisions of H.R. 16141 and are deeply grateful to Congressman Carey and Chairman Mills for sponsoring this measure.

Our position in favor of this measure is grounded on the guaranteed religious freedom clause of the "Establishment Clause" which provides that "Congress shall make no law . . . prohibiting the free exercise of religion." Our rationale is based largely on the works of our founding fathers, Thomas Jefferson, and James Madison.

Thesis

We believe that a thorough analysis of the positions held by Jefferson and Madison prove that the public school today holds a position in American life similar to that held by the state church in earlier times, in that one school system instead of one church receives favored treatment and tax support. Such an official establishment of education imposes exactly the same restrictions on the liberties of minorities as an established church. When parents *are forced by law* to have their children exposed to teachings that are alien and inimical to their own beliefs, it doesn't really matter to them whether that teaching takes place in a church or in a school, whether it comes from a state approved preacher or a state approved teacher. In fact, it is worse, because attending a state approved church was not always compulsory, whereas, attending a state approved school is compulsory for most children in America.

We hold that American educational policy does violence to *The Universal Declaration of Human Rights* sponsored by the United Nations which provides expressly that "parents have a prior right to choose the kind of education that shall be given their children." (Article 26) As we understand it, the American Government is a signatory to this *Universal Declaration of Human Rights.*

We hold that the notion that public education is religiously neutral is without basis in fact. As virtually any philosopher will point out, assumptions regarding ultimate realities and values are implied in every pedagogical approach including avowedly "neutral" or "secular" postures. The very attempt to discuss natural phenomena and ethical decisions without reference to a theological base is an expression of a religious position, the position that theistic underpinnings are not basic to such discussions. Which approach is more biased one wonders, to introduce theistic premises systematically as in religiously affiliated schools, or to eliminate them systematically, as is attempted in public schools. In essence, government schools are using tax dollars for the very purpose they are being denied to nonpublic schools.

We believe that the opponents of this measure are not consistent in that many of them, especially pastors or ministers, graduated from public elementary and secondary schools. The currently equated value of this education in terms of public tax funds is over $10,000 per student. Any public school graduate who enrolls in a seminary or divinity school uses the education the public provided for him for pre-seminary or pre-divinity school educational requirements. At that point he is in reality using public tax monies for religious purposes. Every in-service pastor or minister of the Gospel who graduated from public elementary or secondary schools is daily utilizing public funds invested in his K–12 education, for the promulgation of religious tenets. The only way to extricate all religious connotations and eradicate any inter-relatedness of public education and religion is to do like Russia and China, viz., suppress all seminaries and any fully free religious instructional activities.

On page 113 of *Epperson vs. Arkansas*, Justice Black virtually conceded that the Supreme Court sanctioned the teaching of the anti-Christian doctrine of evolution vs. creationism holding that the Arkansas statute forbidding the teaching of the evolutionary theory violated teachers' rights. In this opinion Justice Black observed:

"A second question that arises for me is whether this Court's decision forbidding a State to exclude the subject of evolution from its schools infringes the religious freedom of those who consider evolution an anti-religious doctrine. If the theory is considered anti-religious, as the Court indicates, how can the State be bound by the Federal Constitution to permit its teachers to advocate such an "anti-religious" doctrine to school children? . . . Unless this Court is prepared to simply write off as pure nonsense the views of those who consider evolution an anti-religious doctrine, then this issue presents problems under the Establishment Clause far more troublesome than are discussed in the Court's opinion. (p. 113)"

Setting forth a pragmatic point of view, we wish to quote excerpts from an article which appeared in the September 21, 1968 issue of *Saturday Review* by Dr. Donald A. Erickson, Associate Professor of Education, University of Chicago. Dr. Erickson states:

"I favor public support to non-public schools because I see little hope that public education as it is now structured in the major cities can bring about the necessary fundamental reforms. I have reluctantly concluded that the rigidities of public education in the face of the urban crisis are not a passing phase but advanced arteriosclerosis, a tendency of large, publicly protected institutions to become, as Nathan Glazer put it, 'tired, bureaucratic, and corrupt . . . At that point, they must be supplemented or supplanted by new institutions, which will hopefully respond more sensitively to the needs of their clients.'

"While all children are handicapped by these systems, *the results are most serious for the poor.* The schools were adapted in the first place, albeit imperfectly, to the politically potent middle class. Public education has never been given adequate resources, particularly for helping the disadvantaged, and in the light of public disinchantment it seems unlikely that the institution will receive the massive infusion of funds that effective programs require. To pour new moneys into the existing machinery would produce only negligible improvements. If anything, revolutionary adjustments now seem less likely than before.

"*Something drastic ails the system.* It needs drastic renovation and the shock treatment of being forced to compete for clients and support. And while it is being rejuvenated, if indeed it can be, we must solve our major problems through whatever instrumentalities are available, public or private." (end quote) Emphasis added.

Again, Honorable Members of the Committee, we implore you to bear in mind that as the American educational system is operated, poor people have no choice but to send their children to state schools because the government levies a heavy tax on all and places all the revenue behind the state's secular-humanistic philosophy of education. Poor people cannot afford to pay both the tribute exacted by the state for the state schools and the tuition for semi-public schools. If education were not a compulsory, forced consideration, it would be different. We do not apply the immediately above criteria to higher education, participation in which is a voluntary consideration.

There are different ways to discriminate against religious freedom, one is to attach a financial penalty to the exercise of it.

We believe that it is wrong in principle, and totalitarian in practice, for a state to draft or requisition a child from age 5 and retain him in its possession in a forced compulsory educational framework until up to age 16 all the while subjecting him to numerous philosophies alien to those of his parents and which violate the conscience of his parents.

In America, a monolithic system of education, as Russia has, is developing. In Russia the nonpublic schools are legally exterminated, whereas in America they are being economically exterminated. This creates a situation such as Floyd McKissick so aptly described when he said, "Black people have no alternative to public education. They are trapped in public schools until they are old enough to drop out." We believe that urging the doctrine of total state power in education is dangerous. No free country has adopted it; all totalitarian states have imposed it.

Thank you very much for your kind attention to our recomendation that H.R. 16141 be reported out by your committee with recommendations for adoption by the United States Congress.

SUMMARY OF TESTIMONY

I. The founding fathers were opposed to any establish system which controlled religion and philosophy.

II. Article VI of the U.S. Constitution prohibits religious tests for holding public office.

III. The first amendment states that "Congress shall make no law respecting an estabilshment of religious, *or prohibiting the free exercise thereof.*"

IV. In the 17th and 18th centuries most European nations had established churches which compelled either mandatory attendance and/or tax support of these churches.

V. Many of the colonists came to America to obtain religious freedom.

VI. In the 20th Century U.S. laws require U.S. citizens to support either by attendance and/or taxation the established public school system and its philosophy.

VII. Supporters of nonpublic schools are protesting the compulsory taxation for the support of public instruction, exclusively.

VIII. Nonpublic schools are public in that they are supervised by the state and must meet state criteria

IX. To educate is to influence. To determine to what ends and by what means is a moral question for both state and socalled non-state schools.

X. Supporters of nonpublic schools have chosen their specific schools to provide the academic-moral-spiritual education of their children.

XI. In the U.S. the state established school system is the official system of instruction. Dissension is permitted at the price of double taxation.

XII. The great tyrannies of the world usually have tried to control the mind and dissention was severly penalized. In the U.S. the penalty is financial.

XIII. Nonpublic school supporters believe that education is a subjective activity and desire to determine the moral and philosophical standards of their schools.

XIV. Many early colonies had a single established church and people protested to win the right to worship as they pleased.

XV. The early public school was largely Protestant and the Catholics objected. They established their own schools. The Pierce case of 1925 determined the constitutionality of nonpublic schools.

XVI. Some colonies gradually allowed a group of churches to be equally favored and thus established them. These multiple established churches were still supported by taxation.

XVII. The U.S. Congress has extended some forms of aid to nonpublic schools in Title I and Title II funds but has not as yet treated nonpublic schools equitably. Many private and parochial college students receive tax funds in the form of tuition grants.

XVIII. If a state determines,that some schools shall not receive aid or tax funds then there is no equality and the state is infringing upon the inalienable and equal rights of parental conscience.

XIX. A series of laws which cite the control the state of Michigan exercises over nonpublic schools but denies the supporters of these schools the benefit of the educational tax dollars they have paid.

XX. In early Virginia there was a conflict between the forces of establishment and those who desired freedom of conscience. This is the basic question today in regards to American educational policies as well.

XXI. Patrick Henry wished to establish all Christian churches in 1779.

XXII. Thomas Jefferson's bill is quoted with comments.

XXIII. A bill parallel to Jefferson's bill is quoted and a model for a bill which ought to be enacted by Congress which would provide for the freedom and equality of nonpublic schools is proposed.

XXIV. Patrick Henry's bill is quoted and it is compared to provisions concerning education in the Michigan Constitution. This bill was rejected.

XXV. In 1785 James Madison wrote his famous "*Memorial and Remonstrance*" and his views are elaborated on in 15 points. Each point clearly applies to the claims for justice made by the supporters of nonpublic schools. Madison's views are given under arabic numerals and those of nonpublic school supporters under *Comment*.

STATEMENT OF VIEWS ON SUPPORT OF EDUCATION IN AMERICA—ITS IMPACT ON RELIGIOUS FREEDOM

One of the most heartrending stories is that of man's struggle against civil and ecclesiastical tyranny for the simple right to freely decide how to think and what to believe.

As we refer to history, we do well to remember that a nation which ignores the lessons history teaches is doomed to repeat the tragic mistakes of the past. Let us pray that America may not do this in respect to school and state relationships.

The founding fathers who wrote the Constitution of the United States were acutely aware of the dangers of any established system which controlled religion and philosophy.

They saw with the eyes of history the civil intolerance which condemned the teaching of Socrates, and his life as well; the Roman persecution of the Christians and their beliefs; the Spanish Inquisition against Protestants; the massacre of the Huguenots of France; the slaughter of the Waldensians; the hanging and jailing of English and Irish Catholics by Protestant England; the persecution of the Covenanters in Scotland; the tortures administered to the Quakers; and the banishing of the Baptists by Puritan Massachusetts; and the hundreds of other atrocities committed in the name of religion or civil philosophy.

The founding fathers noted moreover, that even during their own lifetimes those who did not conform to the doctrines and practices of the churches established by law in the places where they lived, such as the dissenters in various American colonies, had been barred from civil and military offices because of their faiths, and had been compelled to pay tithes for propagation of religious opinions they disbelieved.

The founding fathers were determined that none of these tyrannical policies should be continued in the nation they were creating. To this end they inserted two provisions in the Constitution of the United States.

The first of these provisions appears in Article VI and declares that no religious test shall ever be required as a qualification to any office or public trust in the United States.

The second appears in the first amendment, and states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ."

To understand the meaning of the first amendment we must consider the events preceding the writing of the first amendment.

At the time of the settlement of the Thirteen Original Colonies, virtually every nation in the Western Europe and the British Isles had, what were known as, established churches. A comparable condition exists today in the Communist nations where the Communist Party enjoys similar status. The Western European churches were established by law, and the law, in some instances, compelled all persons, including those who dissented from their religious beliefs, to attend their services. The law furthermore required all persons to pay taxes for the construction of church buildings and the support of the clergy of the established churches.

An overwhelming number of the colonists who came from Europe to America came primarily to secure religious liberty and freedom from taxation for the support of established churches. Unfortunately, when these people came to America, they found that in many of the colonies, predominant groups had set up established churches, and that in consequence they were compelled, in such colonies, to pay taxes for the support of churches whose religious doctrines they opposed.

A similar condition exists today in all states of the Union, known as the established public school. These schools are established by law, and the law compels all persons to attend school for a specific number of days each year until up to age 16. The law furthermore requires all persons to pay taxes for the construction of public school buildings and the support of the teachers and administration of the established public schools.

Millions of people who came from Europe to America came primarily to secure religious liberty. When compulsory education became law, these people established their own schools where they felt that their children could be instructed in a manner which would be in accordance with their religious beliefs. Yet, they were, and still are, compelled to pay taxes for the support of established public schools whose educational philosophies and moral guidance they disbelieve.

Many of our ancestors fled Europe to escape one type of persecution only to find it again in another form in America. Just as in colonial days when people rebelled against compulsory taxation for the established church, so too, people today who support non-public schools are protesting compulsory taxation for the established public schools of instruction. It is just as tyranical for the government to legally compel, with the threat of legal sanctions, the universal support of public instruction exclusively, as to decree compulsory financial support for the officially established church.

Parochial, denominational and Christian schools have been labelled "non-public" which is in error. These schools are supervised by the State, follow State guidelines in health, safety, curriculum and educational qualifications. In addition, since these schools fulfill the State requirement of educating children there is no reason to consider these schools non-public: They are public institutions serving a public function. In order to avoid confusion, the terms public and non-public have been used as these are familiar to all.

To educate, to instruct, is to influence. To determine to what ends and by what means this influence is to be guided is a moral question. Education is the search for knowledge and truth. Knowledge does not exist in a vacuum, it is dynamic. Knowledge changes all people who are exposed to it. Yet knowledge cannot exist without the truth and truth is always subject to human interpretation. Through this human interpretation of truth, we learn facts, figures, beliefs, and attitudes.

In our schools we transmit facts and opinions, truths and knowledge, the complexities of culture, the answers to the great human questions of "Whom am I?", "Where am I going?", and finally "How do I get there in a meaningful way?". We educate with a purpose. If this were not true, then education would be a waste of time, money, and effort.

We as Christian parents and as God appointed guardians of our children have the moral duty (and in some cases the freedom) to choose the education which best fulfills the moral standards which the parent expects. To achieve this, diversity in educational institutions, facilities and philosophies are necessary.

The human mind is the most powerful force in the world and nations have historically made efforts to control the mind either subtly or overtly. The Greeks killed Socrates, the Romans imposed emperor and idol worship, Medieval Europe tolerated no pagans or heretics. The Nazis imposed National Socialism. Russia and China and their satellites imposed Marxism or Maoism. No dissent is tolerated.

In America the publicly established State school system serves as the official State organ of instruction, levelling, molding and guiding children. Dissension from the public system is permitted but is costly. This is in keeping with the character of most of the great tyrannies of the world. To the credit of America, educational dissent has not resulted in physical persecution but financial penalty. The legislatures and the courts have mistakenly believed that subjective religious views in education are not prevalent. The establishment of the non-public schools came about primarily because certain people believed that teaching is a subjective activity and that the curriculum would be subjectively taught. Even the U.S. Supreme Court has recognized that a textbook will be interpreted with the bias of the instructor.

Let us see what similarities there are historically between church and State and church-State-school relations.

The first amendment is a reflection of the most advanced thinking on the subject of separation of church and State at the time of its adoption. In general, the process of separation from the pre-Revolutionary to early national periods, went through three identifiable stages. By indentifying them we can note the similarities between religion and education and government policies.

I. *Toleration by the single establishments.*—Dissenting groups and the leaders who believed in religious freedom continued and speeded up the fight against established churches in the effort to win the right to the free exericse of public religious worship. This right they wrung from the conservative groups in State after State in the form of concessions and the granting of privileges of free worship.

SIMILARITY.—After the Catholics expanded their system in the late 1800's a reaction set in. In many States a bitter attack was launched against all private and parochial schools. Oregon passed an amendment outlawing non-public schools and in Michigan an attempt was made but failed. The Oregon amendment outlawing non-public schools was declared unconstitutional in the Pierce case of 1925. The right for educational freedom had been won even though it had to be wrung from unwilling States by way of the courts.

II. *Multiple establishments.*—The liberal groups believing in religious freedom discovered however, that they were still in an underprivileged position because the legal support of taxes and property rights was still assigned by the State to the established churches. They discovered that free exercise was still a shadowy grant of toleration so long as the established churches had the support of tithes and so they renewed the fight to completely dis-establish the favored churches. The established churches on their part, tried to compromise by persuading the legislatures to open up the tax privileges to the dissenting groups one by one. This meant that gradually more and more churches were admitted into the establishment and given the legal rights of taxation for their own public worship.

Thus, establishment came to be applied not just to one church, but to any or all churches that had legal and financial connections with the State. This extended application of establishment was widely recognized at the time of the passing of the first amendment.

SIMILARITY.—The non-public schools are still in an underprivileged position because the legal support of taxes and property rights are still assigned by the State to the established State schools. We have discovered that the freedom to operate is still a shadowy grant of toleration as long as the established public schools have the support of taxation and therefore, we wish to renew the fight to dis-establish the monopoly of the favored public schools systems.

The established public schools on their part have made some compromises by allowing the legislatures and Congress to open up some tax privileges to the dissenting groups. This has been true particularly in regard to G.I. educational benefits, school lunches, construction loans to private colleges, tuition grants to private college students, and Title I and Title II funds for all levels of education. This has meant that many of the non-public schools have moved partially into the establishment and have been the legal beneficiaries of some of their taxes. However, the non-public schools supporters have never been allowed to shift any of their property taxes to the support of their own schools.

Thus, multiple establishment has not been fully carried out. The established public school system is the only system with complete legal and financial connections with the State. At the time of the passing of the first amendment, any cooperation between the State and any or all churches was considered to be establishment. *There can be no doubt that the public school system is the one and only fully established system of mind guidance and development in our country today.*

The meaning of multiple establishments has been conveniently overlooked, or never understood by the various groups today who urge that cooperation between church and State is admissible so long as the State treats all religious groups equally and fairly. This has been the reasoning behind the multiple school systems in the Netherlands where there are basically three systems, Christian, Catholic and Public as well as a few other small systems. The State of course would rule out some groups not considered legitimate but the principle of multiple establishment is the same whether few, many, or all religious groups are taken into it.

III. *Separation.*—It was soon discovered that the compromise of establishing all recognized churches even on an equal or impartial basis was not sufficient.

So long as the State was in the position of determining which churches should have legal and financial privileges of support, there could be no real equality of religious conscience. It was still a grant of privilege by the State to a religious doctrine. Such a principle could not square with the growing belief fostered by the enlightenment that equal rights of conscience were natural and inalienable rights which the State could not infringe and which the State must protect.

SIMILARITY.—This is precisely the belief of many parents who send their children to non-public schools. It is the duty of the State to guard and protect the natural and inalienable right of freedom and equality of conscience. As proof of inequality we cite:

The General Laws of the State of Michigan provide:

1. The Superintendent of Public Instruction is hereby given supervision of all the private, denominational and parochial schools of this State in such matters as is hereinafter provided. (388, 551 M.S.A. 15, 1921).

2. No person shall teach or give instruction in any of the regular or elementary grade studies in any private, denominational or parochial school within this State who does not hold a certificate such as would qualify him or her to teach in like grades of the schools of the State. (388, 553 M.S.A. 15, 1923).

3. The Superintendent of Public Instruction may conduct hearings, issue orders to comply, or close non-public schools. If the order of the Superintendent of Public Instruction . . . shall not have been obeyed within the time specified herein said superintendent . . . may close said school and prohibit the said person, persons, corporation, association or other agencies operating or maintaining such private, denominational or parochial school from maintaining said school or from exercising any of the functions hereunder until said order of the superintendent . . . has been complied with. The children attending a private, denominational or parochial school refusing to comply with the requirements hereof after proceedings herein set forth shall be compelled to attend public schools or approved private, denominational or parochial school under the provisions of the Compulsory Education Act, the same being No. 200 of the Public Acts of 1905, as amended. (388, 554 M.S.A. 15, 1924).

4. The Superintendent of Public Instruction . . . shall have authority at any time to investigate and examine into the conditions of any school operating under this act as to matters hereinbefore set forth and it shall be the duty of such school to admit to such superintendent . . . to submit for examination its sanitary condition, the records of enrollment of pupils, its courses of studies . . . and the qualification of its teachers. Any refusal to comply with provisions herein on the part of such school or teacher shall be considered sufficient cause to suspend the operation of said school after proceedings taken as stated in Section 4 of this act. (388, 555 M.S.A. 15, 1925).

5. Nothing in this act contained shall be construed so as to permit any parochial, denominational, or private school to participate in the distribution of the primary school fund. (388, 557 M.S.A. 15, 1927).

6. In the following cases, children shall not be required to attend the public schools: Any child who is attending regularly and is being taught in a private,

parochial or denominational school which has complied with all the provisions of this act and teaches subjects comparable to those taught in the public schools to children of corresponding age and grade, as determined by the course of study for the public schools of the district within which such private, denominational or parochial school is located. (340, 732 M.S.A. 15, 1932).

These General Laws of the State of Michigan make some facts very clear. They are:

1. Public education is the established system in the State of Michigan.
2. The Superintendent of Public Instruction has the legal authority to supervise all non-public schools and pass judgment on the effectiveness of these schools. In addition, he has the authority to set standards in education, certification and qualification.
3. Non-public schools may not receive tax benefits.
4. Non-public schools are legal if they meet public school standards.

The state obviously is deeply involved in determining which schools meet its standards. Thus, the state is deeply involved in operating a multiple establishment but without providing financial backing for those schools which meet the standards laid down by the state. There is no separation, no equality of conscience. The laws of Michigan make it very clear it will grant privilege to some but not all of its citizens. This is entirely contrary to the meaning of the first amendment.

It is interesting to consider specific events in the State of Virginia which preceded the writing and the ratification of the first amendment. This is true because those most responsible for the writing into our Constitution of the first amendment were two Virginians—Thomas Jefferson and James Madison. By referring to the events in the State of Virginia which preceded the writing of the first amendment, we can find exactly what was meant by the founding fathers when in the first amendment they provided that "Congress shall make no law respecting an establishment of religion".

After 1776 there arose in Virginia a great conflict between those who wanted religious freedom and freedom from coercive taxation for purposes they objected to, and those who wanted to retain an establishment of religion. The crucial question was whether general taxes should be levied for the support of all the denominations.

The issue is of crucial importance as this is precisely the question of the supporters of non-public schools. Should taxes be levied for the support of all of the schools which the Superintendent of Public Instruction deems qualified?

In the Virginia Legislature of 1779, James Henry wished to establish by law virtually all of the Christian Churches as established churches and to levy taxes for the support of all of them on an impartial basis. By this was meant that there would be an official connection between the State and one or more churches, whereby the State recognized such church or churches and provided for taxation for its or their support.

The State of Michigan has established an official connection between the State and the established public school system and it recognizes this school system by giving it financial support. In addition, it recognizes other school systems but does not give them financial aid.

In the same legislature James Madison introduced Thomas Jefferson's bill for religious freedom in Virginia. It is one of the great documents authored prior to the writing of the Constitution. It laid down two propositions. First, the proposition that there should be no religious qualification as a test for holding office; and second, the proposition that it is sinful and tyrannical to tax a man for the propagation of doctrines which he disbelieves.

This is precisely the case that we wish to make. That it is tyrannical and sinful to tax a man for the support and propagation of a secular philosophical system which he disbelieves, to the exclusion of all other philosophies. Thomas Jefferson's great document is quoted below, with comments that contrast the ideal of Jefferson to the reality of tax supported compulsory public education.

Thomas Jefferson's Bill for Religious Freedom

I

Whereas Almighty God hath created the mind free . . . to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves is sinful and tyrannical:

Comment: The law states that we must support compulsory public education . . . "that even the forcing him to support this or that teacher of his own persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor whose morals he would make his pattern."

Comment: Citizens should be free to choose which type of school they want to provide the guidance, teaching, and moral instruction of their children without a heavy financial penalty.

. . . and whose powers he feels most persuasive to righteousness

Comment: This is why some send their children to non-public schools.

. . . therefore the proscribing any citizen as unworthy the public confidence by laying upon him an incapacity of being called to offices of trust and emolument, unless he profess or renounce this or that religious opinion.

Comment: The state holds out the opportunity of free compulsory education as long as we will just set aside our religious convictions and avail ourselves of this free gift.

. . . is depriving him injuriously of those privileges and advantages to which in common with his fellow citizens he has a natural right ;

Comment: State laws state in effect that we do not have a natural right at present.

. . . that it tends only to corrupt the principles of that religion it is meant to encourage by bribing with a monopoly

Comment: That is what the public school system has.

. . . of worldly honors and emoluments; those who will externally profess and conform to it . . . to suffer the civil magistrate to intrude his powers into the field of opinion.

Comment: The Superintendent of Public Instruction decides which non-public schools meet public school standards.

. . . and to restrain the profession or propagation of principles on supposition of their ill tendency is a dangerous fallacy, which at once destroys all religious liberty,

Comment : We are judged to be outside of the public system, thus not eligible for support.

. . . because he being of course judge of that tendency, will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own ;

Comment : Many do not use the public system, but must pay for it, yet receive no support for the system they use.

. . . that it is time enough for the rightful purposes of civil governments, for its officers to interfere when principles break out into overt acts against peace and good order ;

Comment : Non-public schools never advocated rebellion or the overthrow of society and hence constitute no civil threat.

. . . and finally that truth is great and will prevail if left to herself, that she is the proper and sufficient antagonist to error and has nothing to fear from the conflict, unless by human interposition disarmed and debate, errors ceasing to be dangerous when it is permitted freely to contradict them.

Comment : There is no one version of the truth. Each group can claim the truth.

II

Be it enacted by the general assembly : That no man shall be compelled to frequent or support any religious worship, place or ministry whatsoever,

Comment : All are compelled to support public schools.

. . . nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinion or belief ;

Comment : Many have this freedom only if they can fully pay for separate religious school systems.

. . . but that all men shall be free to profess,

Comment : Public school tax laws contradict this.

. . . and by argument maintain, their opinion in matters of religion and that the same shall in no wise diminish, enlarge, or effect their civil capacities.

Comment : In America civil capacities are diminished. Views of many are not worthy of tax support.

III

The rights hereby asserted are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present, or narrow its operation, such act will be an infringement of natural rights.

Comment: The public school tax laws should not operate only for their exclusive benefits at the expense of others.

In order to clarify the issue, a new bill, parallel to that proposed by Jefferson ought to be enacted. Here below is a guide for what could be a new bill for religious educational freedom.

I

Whereas Almighty God has created the mind free . . . to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical; that even forcing him to support this or that teacher of his own religious persuasion, is depriving him of the confortable liberty of giving his contributions to the particular school system, whose moral outlook and values he shares and whose teaching he feels most persuasive to civic, moral and spiritual righteousness . . . therefore the proscribing any citizens as unworthy the public confidence by laying upon him an incapacity of receiving his own tax funds for his schools, unless he professes that his schools are not different than the public schools in all respects is depriving him injuriously of those privileges and advantages to which in common with his fellow citizens he has a natural right: that it tends only to corrupt the principles of that non-public school system it is meant to encourage, by holding out full public support to those school supporters who will externally profess and conform to the public school views . . . to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain, by legally denying the right of the non-public school supporters to pay their education taxes to their own schools, the profession or propagation of principles on supposition of being parochial, private and denominational is a dangerous fallacy, which at once destroys all religious liberty, because he being of course judge of that tendency will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own; that it is time enough for the rightful purposes of civil governments, for its officers to interfere when principles break out into overt acts against peace and good order; and finally, that truth is great and will prevail if left to herself, that she is the proper and sufficient antagonist to error and has nothing to fear from the conflict, unless by human interposition disarmed of her natural weapons, free argument and debate, errors ceasing to be dangerous when it is permitted freely to contradict them.

II

Be it enacted by the Congress: That no man shall be compelled to attend or support any educational philosophy, institution or teaching whatsoever, nor shall be enforced, restrained, molested, or burdened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument and practice to maintain, their opinion in matters of religion and choice of instruction, and that the same shall in no wise diminish, enlarge or affect their civil capacities.

III

The rights hereby asserted are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present, or to narrow its operation, such act will be an infringement of natural right.

The proposed bill by Thomas Jefferson was postponed in 1779 and no action was taken in Virginia for the next five years. The ideas of Jefferson concerning total freedom from state control for the individual in areas of religious conviction and practices were bold, radical and Virginia was not yet ready to grant this freedom.

When the legislature met again in 1784, Jefferson's bill was reintroduced and this time a new bill was added by Patrick Henry. It is extremely interesting and very useful to study his bill and note the similiarities of his proposed compulsory Christian Religion financing and the compulsory public school laws. Indeed, the two are almost identical. The author of the liberty or death statement was convinced that Christianity must be supported by everyone, just as the supporters of the public schools believe that everyone mustfinancially support the public schools. Fortunately for religious freedom, Patrick Henry's bill did not pass. Unfortunately for the non-public schools supporters, compulsory financing for the public schools exclusively is still with us. Those like Patrick Henry, who wish to benefit the public are often misguided and if their wishes are carried out are quilty of denying religious liberty to those who by reasons of conscience hold to values and opinions different from the so-called benefactors.

Here then follows the bill by Patrick Henry with comments and where applicable parallel statements from the Constitution of the State of Michigan

A Bill Establishing a Provision for Teachers of the Christian Religion

Whereas the general diffusion of Christian knowledge hath a natural tendency to correct the morals of men, restrain their vices, and preserve the peace of society; which cannot be effected without a competent provision for learned teachers, who may be thereby enabled to devote their time and attention to the duty of instructing such citizens as from their circumstances and want of education, cannot otherwise attain such knowledge; and it is judged that such provision may be made by the legislature, without counteracting the liberal principle heretofore adopted and intended to be preserved by abolishing all distributions of pre-eminence amongst the different societies or communities of Christians;

> *Michigan Constitution*, Article VIII, Section 1:
>
> "Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."

Be it therefore enacted by the general assembly, that for the support of Christian teachers—per centum on the amount, or in the pound of the sum payable for tax on the property within this Commonwealth, is hereby assessed, and shall be paid by every person chargeable with the said tax at the time the same shall become due; and the sheriffs of the several counties shall have power to levy and collect the same in the same manner and under the like restrictions and limitations, as are or may be prescribed by the laws for raising the revenues of this State;

> *Michigan Constitution*, Article VIII, Section 2:
>
> "The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin." (Public schools shall be financed by) "the distribution of the primary school fund." (388, 557 M.S.A. 15, 1927),

and be it Enacted that for every sum so paid, the sheriff or collector shall give receipt, expressing therein to what society of Christians the person from whom he may receive the same shall direct the money to be paid, keeping a distinct account thereof in his books. The sheriff of every county, shall on or before the ____ day of ____ in every year, return to the court, upon oath two alphabetical lists of payments to him made, distinguishing in columns opposite to the names of the persons who shall have paid the same, the society to which the money so paid was by them appropriated; and one column for the names where no appropriation shall be made. One of which lists after being recorded in a book to be kept for that purpose, shall be filed by the clerk in his office; the other shall by the sheriff be fixed up in the courthouse, there to remain for the inspection of all concerned. And the sheriff, after deducting 5 per centum for the collection, shall forthwith pay to such person or persons as shall be appointed to receive the same by the vestry, elders or directors, however denominated of each such society, the sum so stated to be due to that society; or in default thereof, upon the motion of such person or persons to the next or any succeeding court, execution shall be awarded for the same against the sheriff and his security, his and their executors or administrators; provided that 10 days previous notice be given of such motion. And upon every such execution, the officer serving the same shall proceed to immediate sale of the estate taken, and shall not accept of security for payment at the end of 3 months, nor have the goods forthcoming at the day of sale; for his better direction wherein, the clerk shall endorse upon every such execution that no security of any kind shall be taken; and be it

Further enacted, That the money to be raised by virtue of this act, shall be by the vestries, elders, or directors of each religious society appropriated to a provision for a minister or teacher of the gospel of their denomination, or the providing places of divine worship, and to none other use whatsoever; except in the denominaions of Quakers and Mennonists, who may receive what is collected from their members, and place it in their general funds, to be disposed of in a manner which they shall think best calculated to promote their particular mode of worship; and be it.

Enacted, That all sums which at the time of payment to the sheriff or collector may not be appropriated by the person paying the same, shall be accounted for with the court in a manner as by this act is directed; and after deducting for his collection, the sheriff shall pay the amount thereof (upon account certified by the courts to the auditors of public accounts, and by them to the treasurer) into the public treasury, to be disposed of under the direction of the general assembly, for the encouragement of seminaries of learning within the counties whence such sums shall arise, and to no other use or purpose whatsoever.

This act shall commence, and be in force, from and after the —— day of —— in the year ——.

Patrick Henry was willing to concede religious liberty only to two specific groups and then only if they paid their assessments to their own general fund. He was not willing to concede the right of people to choose which system they wanted. No other group was entitled to freedom. The state was to be the supporter of the Christian churches.

In Michigan we have compulsory instruction. The public system is to be financed by everyone. No exceptions to the rule are allowed. Certain groups may set up their own schools of instruction but then only if they meet state standards. No exceptions to the law are allowed. The state was and is the supporter of the public schools of instruction. The state does not grant parents the freedom to instruct their children as they see fit. Things have not really changed since the days of Patrick Henry. However, Patrick Henry would make one exception, specific groups could exempt themselves from the general assessment and support their own institutions. Michigan will not even allow non-public school supporters to support their own schools with their own tax monies. Patrick Henry did go too far when he did not allow for freedom of choice. This is what parents of non-public school children are asking for—freedom of choice with the freedom to direct their taxes to the schools of their choice.

The bill introduced by Patrick Henry was discussed and postponed for another year. Before November 1785 James Madison penned and circulated his famous remonstrance. We would like to quote his remonstrance point by point and add comments to each.

Memorial and Remonstrance Against Religious Assessments to The Honorable The General Assembly of The Commonwealth of Virginia

"We, the subscribers, citizens of the said Commonwealth having taken into serious consideration, a bill printed by order of the last session of general assembly, entitled "A Bill Establishing a Provision for Teachers of the Christian Religion," and can conceiving that the same, if finally armed with the sanctions of a law, will be a dangerous abuse of power, are bound as faithful members of a free State, to remonstrate against it, and to declare the reasons by which we are determined. We remonstrate against the said bill:

1. Because we hold it for a fundamental and undeniable truth, "that religion or the duty which we owe to our Creator and the manner of discharging it, can be directed only by reason and conviction, not by force or violence." The religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right. It is unalienable; because the opinions of men, depending only on the evidence contemplated by their own minds, cannot follow the dictates of other men: It is inalienable also; because what is here a right toward men, is a duty toward the Creator. It is the duty of every man to render to the Creator such homage, and such only, as he believes to be acceptable to him. This duty is precedent both in order of time and degree of obligation to the claims of civil society. Before any man can be considered as a member of civil society, he must be considered as a subject of the Governor of the Universe And if a member of civil society, who enters into any subordinate association must always do it with a reservation of his duty to the general authority; much more must every man who becomes a member of any particular civil society, do it with a saving of his allegiance to the Universal Sovereign. We maintain therefore that in matters of religion no man's right is abridged by the institution of civil society, and that religion is wholly exempt from its cognizance. True it is that no other rule exists, by which any question which may divide a society, can be ultimately determined, but the will of the majority may trespass on the rights of the minority.

Comment: Instruction from a religious point of view has been a recognized responsibility since before the time of Christ. Christianity too has recognized and encouraged this responsibility. Very shortly after the Puritans settled in Massachusetts they passed laws establishing schools so that children could be instructed and be knowledgeable Christians. This was their conviction and they had the freedom to carry it out. Non-public school supporters also wish to exercise their unalienable rights to direct their conscience, without added penalties. In our democratic society the majority has ruled that all people must support public instruction. Yet it is their religious conviction that their children should attend schools where religious instruction permeates the curriculum. The majority denies them the right to use their educational tax monies for their schools. In this case the majority has trespassed on the rights of the minority.

2. Because if religion be exempt from the authority of the society at large, still less can it be subject to that of the legislative body. The latter are but the creatures and vice regents of the former. Their jurisdiction is both derivative and limited: It is limited with regard to the coordinate departments, more necessarily is it limited with regard to the constituents. The preservation of a free government requires not merely, that the metes and bounds which separate each department of power may be invariably maintained; but more especially, that neither of them be suffered to over leap the great barrier which defends the rights of the people. The rulers who are guilty of such an encroachment, exceed the commission from which they derive their authority, and are tyrants. The people who submit to it are governed by laws made neither by themselves, nor by an authority derived from them, and are slaves.

Comment: The present laws of the State of Michigan in matters of school financing are not expressive of the will of non-public school supporters. The laws concerning taxation for schools of public instruction are an encroachment upon the rights of those people who by religious conviction believe in the necessity of a different system. The authority which forces them to support such a public system is by nature and definition tyrannical and they are but slaves to the present system.

3. Because, it is proper to take alarm at the first experiment on our liberties. We hold this prudent jealousy to be the first duty of citizens and one of the noblest characteristics of the late revolution. The freemen of America did not wait until usurped power had strengthened itself by exercise, and entangled the question in precedents. They say all the consequences in the principle, and they avoided the consequences by denying the principle. We revere this lesson too much, soon to forget it. Who does not see that the same authority which can establish Christianity, in exclusion of all other religions, may establish with the same ease any particular sect of Christians, in exclusion of all other sects? That the same authority which can force a citizen to contribute 3 pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?

Comment: The established public system of instruction is considered a danger to religious liberty. Many years ago, some already had apprehensions about the potential use for sinister purposes such a huge educational system could provide if control of it ever got into the clutches of the wrong kind of people. For instance, nearly a century ago, a Princeton theologian, the great Reverend Doctor A. A. Hodge, predicted that the U.S. public school system would eventually become, "the most efficient instrument for the propagation of atheism the world has even seen. If every party in the state has the right of excluding from the public schools whatever he does not believe to be true," reasoned Dr. Hodge, "then he that believes most must give way to him that believes least, and he that believes least must give way to him that believes absolutely nothing, no matter in how small a minority the atheists and agnostics may be."

The Roman Catholic immigrants realized very quickly that the public system of instruction in the nineteenth century was essentially a Protestant system and they protested this bias. To instruct their children in the manner of which they could conscientiously approve, they established the Catholic parochial schools. The Calvinists, Lutherans, Jews, Seventh Day Adventists and others likewise established schools which reflected their conscience. Nevertheless, the state has not seen fit to extend any type of financial relief to these schools. Rather, the authority of the public instruction system is so comprehensive and all embracing that people who cannot agree with the public system due to their conscience must still support this system. The authority which at one time could establish a system of public instruction of a basically protestant nature is the same authority which now operates a system of public instruction which has cut the ties with protestantism.

Madison was right, the authority which can force a citizen to financially support one type of established system today can force him to support an established system of another type tomorrow. The "tomorrow" of Madison has long ago become a reality. The state system of instruction is the official system, supported by the state and the citizens, both the willing and the conscientious dissenters. The Superintendents of Public Instruction furthermore have been given the authority to determine whether the dissenters meet public standards in education, curriculum, qualifications and length of instruction. The invasion of private individual conscience by the state is alarming. Our forefathers fought for the right to govern themselves, to tax themselves and to believe as they wished. In the twentieth century many find that the battle has to be fought again. The only qualification which the state may impose is that these schools do not seek to overthrow the government. All other areas of conscience are beyond the authority of the state.

4. Because, the bill violates that equality which ought to be the basis of every law, and which is more indispensable, in proportion as the validity or expediency of any law is more liable to be impeached. If "all men are by nature equally free and independent," all men are to be considered as entering into society on equal conditions; as relinquishing no more, and therefore retaining no less, one than another, of their natural rights. Above all are they to be considered as retaining an "equal title to the free exercise of religion according to the dictates of conscience." Whilst we assert for ourselves a freedom to embrace, to profess, and to observe the religion which we believe to be of divine origin, we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence which has convinced us. If this freedom be abused, it is an offence against God, not against man: To God therefore, not to man, must an account of it be rendered. As the bill violates equality by subjecting some to peculiar burdens; so it violates the same principle, by granting to others peculiar exemptions. Are the Quakers and Mennonists the only sects who think a compulsive support of their religions unnecessary and unwarranted? Can their piety alone be entrusted with the care of public worship? Ought their religions to be endowed above all others, with extraordinary privileges, by which proselytes may be enticed from all others? We think too favorably of the justice and good sense of these denominations, to believe that they either covet pre-eminencies over their fellow citizens, or they will be seduced by them, from the common opposition to the measure.

Comment: We assert that the public system of instruction "violates that equality which ought to be the basis of every law," as it denies equal treatment for those who dissent. We too retain an "equal title to the free exercise of religion according to the dictates of conscience." Non-public school patrons believe that God holds them responsible for the total development of their children and thus established non-public schools of instruction according to the dictates of their consciences. This right has been recognized by the Supreme Court of the United States. While it may be their fervent wish that all other parents would recognize this God given responsibility and do likewise, we recognize that we cannot deny the other parents their freedom as their "minds have not yet yielded to the evidence which has convinced us." Yet, while we recognize that parents who do not believe as we do have a natural freedom of their own, they in turn are not willing to recognize that the same freedom exists for others as well. The parents who differ with us have passed laws which subject non-public patron to peculiar burdens. By law they must support public instruction and the total cost of their own as well while the public vehemently denies and responsibility to their schools. The public defense is the "wall of separation," but it does not mind, in fact it compels, money to cross that wall for the public system and then hypocritically argues that public money may not recross that wall to support religious views.

The supporters of nonpublic schools do not demand total legal support for their schools and views. But they ask for their own tax money for their schools. Should public schools of instruction alone be entrusted with the care of instruction? Ought its views to be endowed above all others with special privileges? We think too highly of justice to demand pre-eminence over others and we believe that justice cannot tolerate the establishment of the public system of instruction as pre-eminent and exclusive either.

5. Because the bill implies either that the civil magistrate is a competent judge of religious truth; or that he may employ religion as an engine of civil policy. The first is an arrogant pretension falsified by the contradictory opinions

of rulers of all ages and throughout the world; the second an unhallowed perversion of the means of salvation.

Comment: At present the civil magistrates are called upon and legislate on matters concerning the religious truth. They decide what is religion and religious instruction in the schools and either pass laws or decide in court cases what may or may not be taught. Religion is not used as civil policy but rather the doctrine of the wall of separation which compels all education tax money to travel in one direction, into the public educational system. The first involves deciding what is truth and the second is a perversion of justice.

6. Because the establishment proposed by the bill is not requisite for the support of the Christian religion, to say that it is, is a contro-diction to the Christian religion itself; for every page of it disavows a dependence on the powers of this world; it is a contradiction of fact; for it is known that this religion both existed and flourished, not only without the support of human laws but in spite of every opposition from them; and not only during the period of miraculous aid, but long after it had been left to its own evidence and the ordinary care of providence. Nay, it is a contradiction in terms; for a religion not invented by human policy, must have pro-existed and been supported, before it was established by human policy. It is moreover to weaken in those who profess this religion a pious confidence in its innate excellence, and the patronage of its author; and to foster in those who still reject it, a suspicion that its friends are too conscious of its fallacies, to trust it to its own merits.

Comment: The desire for justice and equality for the parents who support nonpublic instruction does not imply a collapse of the public system of instruction nor should it. Education had existed and flourished long before it became compulsory. Even in the Dark Ages in Europe schools continued to exist and train students. It is a natural desire of parents to provide and seek opportunities of instruction for their children. Those public officials who cry in alarm at the thought of losing the tax monies that the public system of instruction cannot be trusted to its own merits and win the support of those who attend this school system. This lack of confidence does not justify opposing justice and equality in financing nonpublic schools.

7. Because experience witnesseth that ecclesiastical establishments, instead of maintaining the purity and efficacy of religion have had a contrary operation. During almost 15 centuries, has the legal establishment of Christianity been a trial. What have been its fruits? More or less in all places, pride and indolence in the clergy; ignorance and servility in the laity; in both superstitution, bigotry, and persecation. Inquire of the teachers of Christianity for the ages in which it appeared in its greatest luster; those of every sect point to the ages prior to its incorporation with civil policy. Propose a restoration of this primitive state in which its teachers depended on the voluntary regards of their flocks; many of them predict its downfall. On which side ought their testimony to have greatest weight, when for or when against their interests?

Comment: For almost a century America has had compulsory education. What have been its fruits? We have witnessed a multitude of methods, psychologies, philosophies, techniques, games and failures. Education was to enlighten, to provide moral training for the child, to prepare him for adulthood, to make him a better citizen, to make him aware of his role in the decision making process of society. The record is not without millions of failures. Children still graduate from schools with very little accumulation of knowledge. By eliminating the ties to Christianity, the public schools have denied themselves a moral base since all things have then become relative. We discover that young people are graduating without any definite values in life. Even the role of responsible citizenship is being replaced by mob action, mob demonstrations, campus protest and high school disorders. In many public schools of instruction education is haphazard and sometimes takes place under the watchful eyes of the local enforcement agents.

8. Because the establishment in question is not necessary for the support of civil government. If it be urged as necessary for the support of civil government only as it is a means of supporting religion, and it be not necessary for the latter purpose, it cannot be necessary for the former. If religion be not within the cognizance of civil government, how can its legal establishment be said to be necessary to civil government? What influence in fact have ecclesiastical establishment had on civil society? In some instances they have been seen to erect a spiritual tyranny on the ruins of civil authority; in many instances they have been seen upholding the thrones of political tyranny; in no instances have they been seen

the guardians of the liberties of the people. Rulers who wish to subvert the public liberty, may have found an established clergy convenient public auxiliaries. A just government, instituted to secure and perpetuate it, needs them not. Such a government will best be supported by protecting every citizen in the enjoyment of his religion with the same equal hand which protects his person and his property; by neither invading the equal rights of any sect, nor suffering any sect to invade those of another.

Comment: Neither the civil government nor society will collapse if the public system of instruction loses some of its special advantages. Most of our government leaders in the Twentieth Century have recognized the evil influences of monopolies.

Our society advocates diversity and competition. Even the largest state regulated private monopoly, A.T.T. must allow competition if it exists. If Bell were allowed to bill the subscribers of the local independent telephone companies in addition to their own telephone bills, obviously these small companies would soon be forced out of business. This would be an unfair business advantage and wisely this is not tolerated in the business world.

In matters of education the state has all the advantages and can financially force independent schools to close. The unjust power of the state has been perpetuated and it has been disguised under the name of protecting religious liberty. This liberty has come to mean that you have the freedom to operate and finance independent schools only if you also pay the costs of the state education monopoly.

"Justice is blind" is a phrase used to describe impartiality but in this case justice is literally blind in that it cannot perceive the injustice. The liberty of the nonpublic school supporters is everywhere legally subverted with the willing aid of the N.E.A., the A.C.L.U. and many elected public servants.

If the government does not support the right of every citizen to fair treatment and religious freedom, then such a government is a tyranny. The nonpublic school supporters have no right to dictate to those who disagree with them. This also implies that the public does not have the right to dictate to the other groups. Each group has its own rights and if the aim of the state, namely an educated citizenry, is being met, then the state may not decree preference for any one system.

9. Because the proposed establishment is a departure from that generous policy, which, offering an asylum to the persecuted and oppresed of every nation and religion, promised a luster to our country, and an accession to the number of its citizens. What a melancholy mark is the bill of sudden degeneracy. Instead of holding forth an asylum to the persecuted, it is itself a signal of persecution. It degrades from the equal rank of citizens all of those whose opinions in religion do not bent to those of the legislative authority. Distant as it may be, in its present form, from the inquisition it differs only from it in degree. The one is the first step, the other the last in the career of intolerance. The magnanimous sufferer under this cruel scourge in foreign regions, must view the bill as a beacon on our coast, warning him to seek some other haven, where liberty and philanthropy in their due extent may offer a more certain repose from his troubles.

Comment: The present method of financing the public system of instruction offers no financial freedom to those who, by reasons of conscience disagree. The religious freedom for which our country was known and for which we are still thankful is being denied today. If one freedom can be denied today, then another can be denied tomorrow. The supporters of nonpublic schools, are being degraded from the equal rank of citizens since their opinions do not bend to the philosophies of the public system of instruction. Legislative authorities and courts have not been willing to consider them as equal citizens. Repeatedly there is talk of aid, but aid indicates second class status. They are of equal rank and share equal rights. Anything less indicates persecution and the beginning of a general inquisition.

10. Because, it will have a like tendency to banish our citizens. The allurements presented by other situations are everyday thinning their number. To superadd a fresh motive to emigration by revoking the liberty they now enjoy, would be the same species of folly which has dishonored and depopulated flourishing kingdoms.

Comment: The Supreme Court of California in 1971 ruled that the present system of financing public schools was unequal and unfair. Unfortunately, these comments were limited to the public system. In Michigan an effort is being made to provide equal income for all public schools in the state. A proposed shift from property to income taxes would ensure that the poorest would not be taxed beyond their ability to pay and that the rich would pay proportionately more. The private schools, the nonpublic institutions, have watched their enrollment decrease as costs rose and the ability to support two systems, public and nonpublic, declined. Some States have made efforts to rectify the unjustness of supporting two systems, but have been frustrated by the courts. Those who still enroll children in nonpublic schools are people who will either sacrifice more than usual or have above average incomes. The latter will soon be taxed more heavily and thus increase the pressure on them to withdraw their support from the nonpublic schools.

The state has tremendous powers, and the power to destroy is the greatest of all powers. The tyranny of the state education is everywhere evident.

11. Because, it will destroy that moderation and harmony which the forebearance of our laws to intermeddle with religion, has produced amongst its several sects. Torrents of blood have been split in the Old World, by vain attempts of the secular arm to extinguish religious discord, by proscribing all difference in religious opinions. Time has at length revealed the true remedy. Every relaxation of narrow and rigorous policy, wherever it has been tried, has been found to assuage the disease. The American theater has exhibited proofs, that equal and complete liberty, if it does not wholly eradicate it, sufficiently destroys its malignant influence on the health and prosperity of the state. If with salutary effects of this system under our own eyes, we being to contract the bonds of religious freedom, we know no name that will too severely reproach our folly. At least let warning be taken at the first fruits of the threatened innovation. The very appearance of the bill has transformed that "Christian forebearance, love and charity," which of late mutually prevailed, into animosities and jealousies, which may not soon be appeased. What mischiefs may not be dreaded should this enemy to the public quiet be armed with the force of a law?

Comment: In the Old World the various governments sought to promote one faith among their peoples without regard for individual conscience. The results were often disastrous. In America, the U.S. Supreme Court, while allowing the existence of private Christian, denominational and parochial schools, nevertheless encourages and promotes one state system of instruction by imposing severe economic hardships upon parents who support the above schools. There is no liberty if it is not equal and so far the courts and most legislatures have shown no desire to provide equality. The very name nonpublic signifies inequality. The "nonpublic" schools must meet all state standards for quality in education and yet the parents must in addition support the public system while receiving no support for their own. There has been no equality for more than one hundred years. Even Horace Mann recognized the injustice of any law compelling a man to support a school system which is different from the one his child attends. Public greed for the nonpublic dollar is at the root of this legally sanctioned injustice. Many have suffered a long time and now declare that the time has come to stand up and assert their claim for equal liberty and justice.

12. Because, the policy of the bill is adverse to the diffusion of the light of Christianity. The first wish of those who enjoy this precious gift, ought to be that it may be imparted to the whole race of mankind. Compare the number of those who have as yet received it with the number still remaining under the dominion of false religions; and how small is the former. Does the policy of the bill tend to less the disproportion? NO. It at once discourages those who are strangers to the light of (revelation) from coming into the region of it; and countenances, by example the nations who continue in darkness, in shutting out those who might convey it to them. Instead of leveling as far as possible, every obstacle to the victorious progress of truth, the bill with an ignoble and unchristian timidity would circumscribe it, with a wall of defense, against the encroachment of error.

Comment: This entire passage characterizes the instruction of the public schools today. The public system hinders the spreading of Christianity, it seeks to balance Christian tenets with pagan tenets to prove its neutrality. The public system confuses the minds of young people in the area of Christian truth by permitting people of all the pagan religions of the world to instruct their young minds. Even atheists and agnostics are permitted to instruct children and we must recognize that the moral values of many non-Christians are offensive to the sincere Christian. To subject the minds of our children to these offensive values is an abdication of the responsibility we have been charged with by God, because we hold that God gives the child to the parents and not to the state.

Young children need a sure guidance so that when they leave home, they will be able to cope with the diversities of society. Not to do so would be irresponsible for many Christians. The laws of many states regard people under 18 as minors, incapable of thinking as an adult and not responsible for their behavior to the degree that an adult is held responsible. The laws differentiate between juvenile and adult behavior. How then can the courts and the legislatures continue to declare that the public system is for everyone when there is such a diversity of values in the public system to which the young minds of our children are subjected.

Truth does not exist in a vacuum, it is interpreted by people and in the case of the public system of instruction, the truth will be interpreted by each instructor according to his own life's perspective. We, too, interpret the truth, according to our values and we wish our children to be instructed according to the values we believe. The present system of financing for education favors the polyglot system of values over and above the specific systems of values. By subjecting all to laws requiring that they support the public system, the state has in fact established a smorgasbord value system of its own. This is in direct violation of the first amendment.

13. Because, attempts to enforce by legal sanctions, acts obnoxious to so great a proportion of citizens, tend to enervate the laws in general, and to slacken the bonds of society. If it be difficult to execute any law which is not generally deemed necessary or salutary, what must be the case where it is deemed invalid and dangerous? And what may be the effect of so striking an example of impotency in the government, on its general authority?

Comment: In the United States roughly one tenth of all students attend nonpublic schools. The private Christian, denominational and parochial schools account for most of the nonpublic schools in existence in our society. It is clear that present laws, enforced by legal sanctions, are very burdensome to a large number of parents who support these nonpublic schools. We question the impotency of the government in recognizing the injustice which exists. If the injustice exists due to the inability of the government to withstand the pressures and avaricious demands by the majority, then the government has fallen into a shameful state of affairs, incapable of providing moral leadership and justice. If the present injustice exists by design then those who have forced people to obey these laws by coercion and legal sanctions, have acted irresponsibly with their powers. The test of leadership has always been fairness and yet as far as we are concerned, unfairness in education has been the law of the land. No matter for what reason it exists, it can no longer be tolerated .

14. Because a measure of such singular magnitude and delicacy ought not to be imposed, without the clearest evidence that it is called for by a majority of citizens; and no satisfactory method is yet proposed by which the voice of the majority in this case may be determined, or its influence secured. "The people signify their opinion respecting the adoption of the bill to the next session of assembly." But the representation must be made equal, before the voice of either the representatives or of the counties, will be that of the people. Our hope is that neither of the former will, after due consideration, espouse the dangerous principle of the bill. Should the event disappoint us, it will still leave us in full confidence, that a fair appeal to the latter will reverse the sentence against our liberties.

Comment: We recognize and openly state that the advocates of nonpublic schools are decidedly in the minority in any state. For them there is no appeal to the majority. Many parents in despair of continuing their ability to finance their child's nonpublic instruction have pleaded for aid of any type. The 1970 vote on Proposal C was the result of finally obtaining some form of aid. This aid was rejected by a majority of only 6%. The entire procedure of the 1970 "parochiad" issue, even though 44% voted in the negative and are a large minority, they must still bow their necks under the heels of the 56% majority and it is a tragedy.

First, the vote showed that the people were unwilling to recognize injustice and the statements made by the supporters of the public system of instruction left no doubt that in their minds, any aid which diminished their share of the public funds for education was intolerable. Second, aid is not what the nonpublic school parents should have asked for. The continued refusal of the courts and the legislature to deal justly drove these parents to this pitable status of begging for crumbs of mercy. It is an indictment of the governing process and the judicial system when a group of people are reduced to begging for handouts. Justice has indeed fallen upon hard times but perhaps the end is in sight, with legislation such as H.R. 16141 pending.

The parents who support private Christian, denomination and parochial schools do so at a great cost to themselves. Theirs is not a whimsical attitude but a deep rooted conviction. To recognize the right of such a conviction to exist and to establish institutions for the instruction of such convictions is an empty right when at the same time these people are legally required to support institutions which teach and instruct values which these people do not support.

It is an empty right when the costs of supporting two systems becomes so prohibitive that people must make a choice, a choice which is always coerced since the state by threat of legal sanctions, forces people to support the public system exclusively at all times. We have become the slaves of an unwanted system, the slaves of a legal tyranny so powerful, that it forces people to compromise their convictions and finally, to justify their only choice available, to deny the importance of their convictions. Not even Jefferson and Madison could have envisioned a state so powerful, so bent on injustice as the present state educational laws.

15. Because, finally, "the equal right of every citizen to the free exercise of his religion according to the dictates of conscience" is held by the same tenure with all our other rights. If we weigh its importance, it cannot be less dear to us; if we consult the declaration of those rights which pertain to the good people of Virginia, as the "basis and foundation" of government, it is enumerated with equal solemnity, or rather studied emphasis. Either then, we must say, that the will of the legislature is the only measure of their authority; and that in the plentitude of this authority, they may sweep away all our fundamental rights; or that they are bound to leave this particular right untouched and sacred. Either we must say, that they may control the freedom of the press, may abolish the trial by jury, may swallow up the executive and judicial powers of the State, nay, that they may despoil us of our very right of suffrage and erect themselves into an independent and hereditary assembly; or we must say, that they have no authority to enact into law the bill under consideration. We the subscribers say that the general assembly of this Commonwealth have no such authority. And that no effort may be omitted on our part against so dangerous an usurpation, we oppose it, this remonstrance; earnestly praying, as we are duty bound, that the Supreme Lawgiver of the Universe, by illuminating those to whom it is addressed, may on the one hand, turn their councils from every act which would affront His holy prerogative or violate the trust committed to them; and on the other, guide them into every measure which may be worthy of His blessing may redound to their own praise, and may establish more firmly the liberties, the prosperity, and the happiness of the Commonwealth.

Comment: Free exercise of religion according to the dictates of conscience is of the same nature as all our other rights. If this right cannot be granted then we are in danger of losing our other rights as well. If nonpublic school patrons are first class citizens then they are entitled to equal justice and equal protection. For too long have the courts and legislatures usurped the right to declare that there is a distinction between conscience and convictions of those who support the public system of instruction and those who support the nonpublic systems. The conscience and convictions of each man are free. There exists not one court, one legislature, one branch of N.E.A., one pressure group, one lobby or one citizen which should be allowed to compel a man to change his conscience or convictions or force him to compromise his conscience or convictions.

Religious liberty is a fundamental right. Our ancestors believed in this principle, came to this country because of the religious liberty which was established because of the efforts of Jefferson and Madison. *Our ancestors believed in erecting institutions of instruction which reflected their freely held convictions.*

In some cases the conscience of our ancestors caused them to establish private Christian, denominational or parochial schools. In other cases, the conscience of our ancestors induced them to establish schools of a nonreligious nature. The freedom to do so was one of the greatest triumphs of early American society. Yet, somewhere in the nineteenth century a change of attitude developed. The latter schools became the preferred type of schools and the former fell into public disfavor. Perhaps it was fear of the Protestants that Catholics might subvert the state, perhaps it was the desire to melt all people into one mold by way of a public system, we cannot say. This decline has accelerated in the past decade, primarily because of the ever increasing costs of education. Whereas in 1947 total expenditures for education amounted to $6.5 billion (2.8% of the G.N.P.) by 1967 expenditures for education came to $58.5 billion (8% of the G.N.P.), a 900% increase.

The injustice which once was a nuisance has become a millstone around the necks of many. The ability to remain financially capable of supporting two systems is coming to an end. Now the time has come to ask once more for justice. We pray that the Congress, the legislatures and the courts will once and for all declare that religious liberty does indeed exist, free from government control. We hope that the unfinished work of Jefferson and Madison will now be completed.

Humbly and gratefully submitted for the testimony of record on H.R. 16141 of 1972.

NATIONAL GOVERNORS' CONFERENCE,
Washington, D.C., August 22, 1972.

Mr. JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.

* * * * * * *

I am enclosing for your information and the Committee's the current policy positions of the National Governors' Conference on the education finance issue:

1. Policy statement B-15—Education Finance.
2. Policy statement B-16—Value Added Tax.

Also enclosed is a major report by the National Governors' Conference this year concerning *The States and Education Finance—a 1972 Overview* plus a current survey of school finance study commissions and committees that are now in operation within each State. If you think it appropriate, we would be glad to have these items submitted for the hearing record. Additional copies are also available for members of the Committee that you may request.

* * * * * * *

Most sincerely,

JAS. L. MARTIN,
Associate Director.

Enclosures.

B-15—EDUCATION FINANCE REFORM

The State role in financing elementary and secondary education is the most vital issue currently facing the States. Education is and must continue to be a State responsibility. State action to achieve equal educational opportunity must begin immediately, progress rapidly, and have the aggressive leadership of elected officials in State Government.

The National Governors' Conference urges all States to undertake immediate action toward equalizing educational opportunity. There is great variety in educational finance systems available to States as they seek to achieve this objective. Review of the issues and approaches underscores one critical point—the wide variety of alternatives prevents a "best solution." Nevertheless, States must focus on one prime objective—elimination of local wealth as the major determinant in educational opportunity.

Rapidly rising education costs, requirements for equal educational opportunity, and increased demand for all local services have combined to bring heavy pressure upon the education financing systems of many states. Recent state and federal court decisions have further dramatized the education finance dilemma. Since August 1971, state courts in Arizona, California, and New Jersey, and federal district courts in Texas and Minnesota have declared unconstitutional those financing systems which allow local disparities in property-based wealth to be reflected in unequal educational opportunity. Today more than 30 similar cases are pending in state and federal courts.

In order to meet the State's responsibilities for providing equal educational opportunity and at the same time to avoid serious financial and administrative disruptions and the potential misuse of resources involved in immediate full equalization, it is recommended that each State develop plans, programs and a specific timetable to accomplish this reform with all deliberate speed.

Recent studies of the education finance problem in individual States indicate the State examination of any current system should include study of such alternative elements as the following:

State versus local responsibility for raising education revenues from a variety of taxes;

Property tax reform;

Property tax relief;

State assumption of selective education costs such as special education and capital outlays;

State imposed equalization formulas to insure equal educational opportunities regardless of local district wealth;

Local control options, such as enrichment programs, curriculum development, staffing, innovation, transportation and personnel;

School system organization and administration.

The National Governors' Conference has existing policy with regard to the federal role in education. Paragraphs one and three of Policy Statement C. 4 declare the Governors' support for:

"Assumption by the Federal Government of far greater responsibility for the financing of education. Such increased federal financial participation should take the form of general grants to the States for educational purposes. Both the legislation and federal regulations for such a program should leave maximum flexibility to States and localities to develop programs to meet their most urgent needs. The basic purpose of such a program would be to help meet the rapidly rising basic cost of education, not to stimulate new supplementary programs. Such programs should not mandate the creation of any new State or local administrative mechanisms."

"Consolidation of existing federal grant-in-aid programs for education into broad functional categories, thereby increasing the ability of States and localities to design programs within broad federal policy guidelines to meet critical needs in individual States and localities."

While achieving educational equality is primarily the responsibility of individual States, new federal assistance will be necessary to assist States in doing this. Federal programs developed to provide such assistance should include the following principles:

1. New assistance should not be aimed at encouraging a single, federally prescribed approach to educational equalization. Differing State political traditions and fiscal situations must be recognized, since an attempt to impose a national structure which violates these variations will hinder rather than advance equalization.

2. The States should not be by-passed in federal education legislation, directives or policy decisions since States have constitutionally and historically maintained ultimate responsibility for education.

3. Federal assistance toward equal educational opportunity should not be tied to other objectives such as property tax relief. Local tax relief and reform is a state concern and must ultimately depend upon state action.

4. Federal financial assistance for education should continue to be appropriated from the general revenues of the U.S. Treasury to assure flexibility in the face of changing needs.

B-16—National Value Added Tax

The Committee has examined the recent Administration concept of providing to States a substantial increase in federal funds for education through a national value added tax which would require relief of local residential property taxes.

The Committee unanimously agrees that the issues of education finance, property tax relief and reform, and a national value added tax are related, but separate issues, which must be reviewed individually. The Committee also believes that discussion of a national value added tax should not delay immediate action toward education finance reform in the individual States.

Moreover, the National Governors' Conference questions the adoption of a federal value added tax because:

> The federal government has already usurped control over an increasing number of revenue sources;
>
> Federal income taxes have been cut five times in the last ten years while State and local governmental units have drastically increased taxes;
>
> A national value added tax would provide direct competition for the 45 States that now rely on the general sales tax as a major source of revenue;
>
> The principle of basing federal taxation on ability to pay as measured by income has been gradually eroded in the past decade, and the proposed value added tax would further accelerate the shifting of federal taxation away from graduated income levies.

Finally, the Committee reiterates its strong support for the existing National Governors' Conference policies calling for revenue sharing and the federal assumption of all welfare costs. The Committee believes passage of these measures, combined with a restructuring of State and local education finance systems, should be accomplished before decisions are made on a national value added tax.

Education
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Research Brief

No. 1
June 1, 1972

DEPARTMENT OF RESEARCH AND INFORMATION SERVICES
Russell B. Vlaanderen, Director

Survey of
School Finance Study Commissions and Committees

Compiled By
Dr. Chris Pipho
Associate Director
Department of Research and Information Services

INTRODUCTION

The implications of the "Serrano-type" court cases are slowly making an impact on state school finance structure. Nearly every state has just completed or is undertaking a study of public school finance problems. Although the impetus for change is coming from the courts, the real work is being accomplished by the Governors, Legislators, and staff people as they prepare to change the school finance structure in each state. This "Survey of School Finance Study Commissions and Committees" is an attempt by the Education Commission of the States to assist by alerting study groups of similar efforts in other states. It is not a final report but merely a status report as of June 1, 1972.

The Education Commission of the States plans to up-date this report and, with the assistance of a grant from the Spencer Foundation, to offer in-depth assistance to member states on school finance reform.

Russell B. Vlaanderen, Director
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SURVEY OF SCHOOL FINANCE STUDY COMMISSIONS AND COMMITTEES

Department of Research and Information Services
EDUCATION COMMISSION OF THE STATES
1860 Lincoln Street, #300, Denver, Colorado 80203

June 1, 1972
Compiled by Dr. Chris Pipho

STATE		INFORMATION ON COMMITTEE OR COMMISSION
ALABAMA		Alabama Education Study Commission. Established by the 1969 Legislature as a Permanent Commission to Study Education. Began functioning in January 1971. The Commission consists of eight lay people (representation by Congressional district), an executive secretary (non-educator) and a coordinator (educator). The Commission has appointed eight task forces. School finance is being studied by the task force on finance and the task force on community support. The coordinator is presently conducting an inventory of educational programs to include statewide goals and objectives. Contact: Executive Secretary, Joe Dawkins, (205) 269-6526; Coordinator, Dr. B. D. Whetstone, (205) 269-7996. Alabama Commission on Higher Education. Established by the 1969 Legislature to study higher education. The Commission is now preparing a master plan for higher education in Alabama. Nineteen advisory commissions representing all higher education institutions and groups have been appointed. The master plan and budget are due May 1, 1973. Contact: Dr. Clanton W. Williams, (205) 269-7515.
ALASKA	1970-	Advisory Council on State Financial Support to Public Schools.[1] Final report and recommendations made in January 1970. Recommendations: (1) Basic education programs in the schools should include kindergarten, vocational education and special education; (2) State share of operating expenses for basic program of each district should be determined by the equalized percentage method; (3) State should contribute 90% of operating revenues for basic programs; (4) State should encourage districts to develop supplemental programs and should fund them in the same proportion as basic programs; (5) BIA schools should be transferred to the state; (6) Rural education should be at the same level as other districts; (7) Foundation Program should provide an allowance for loss reduction, an incentive for program improvement, three-time "weighting" for special education students, and expansion of present programs up to 55 professionals per 1000 pupils. Contact: Jon Peterson, Project Director, Stanford University.
ARIZONA	1971-	Task Force on Education. Appointed by President of the Senate and Speaker of the House. Ten subcommittees functioned; several directed their efforts to school finance. Reports were made to the Legislature in January 1972. Contact: Senator Fred Koory or Arizona Legislative Council, (602) 271-4900.

Arizona (continued)

1972-HB 2102 authorized the Arizona Department of Education to develop a cost accounting system for the schools of Arizona. $175,000 was allocated. Work will begin in seven pilot locations. Contact: Dr. W. P. Shofstall, Superintendent of Public Instruction, (602) 271-4361.

1972-"Public School Finance in Arizona" -- a series of talks made to the Arizona Legislature by Senator David B. Kret in support of SB 1122 and other legislation. SB 1122 was to shift money presently going into flat grants ($182.50 per child based on ADA) to equalize a district's qualifying tax rate would be increased from ten to 50 cents and the 6% control mechanism would be geared to changes in the National Consumer Price Index. SB 1122 died in Senate committee. The series of talks covers 22 topics related to school finance. Publication of the series is anticipated for June 1972. Contact: Senator D. B. Kret, (602) 271-5284.

ARKANSAS

1969-71-Legislature appointed Committee to Study the Arkansas Minimum Foundation Program. Act 376 -- school finance act -- was passed by the Legislature in 1971. This act was a result of the Committee's study. Contact: Joe L. Hudson, Associate Director of Finance, Arkansas Department of Education, (501) 371-1667.

CALIFORNIA

1969-Advisory Commission on Tax Reform. Ten percent of state income tax distributed on a per capita basis to local governments to relieve property taxpayers; sales tax on utilities and selected services; statewide property tax for public schools; increased school foundation program; withholding and estimates system; federal-type personal exemption in addition to current tax credit for dependents.

1969-California State Department of Education Study[1] Issued report: "Structure of Public School Support and Recommendations for Improvement" which included (1) State should work to a level of 50% funding; (2) State funds should be used to raise the foundation program support and categorical aid support to realistic levels; (3) In determining districts' eligibility for state funds, there should be no mandatory increases in tax rates; (4) Allow for inflation and improvement of the level of participation in estimate submitted to the Legislature by Governor; (5) School finance measures should be acted on early in general session of Legislature; (6) statewide policy committee on school finance should be established.

1970-The Joint Committee on Reorganization of Large Urban Unified School Districts has completed a fifteen-month study on the problems of urban education. The Committee plan would move public education toward the goal of creating the opportunity for a classroom situation which would be more conducive to an effective learning process by (1) Expediting policy making and

California (continued)

administrative decisions required for classroom level support of teachers and administrators; (2) Improving financial resource utilization; (3) Providing for increased representation of the community in educational decision-making in order to bring the curriculum and program development closer to the relevant needs of the student; (4) Targeting low-performance areas for both accountability analysis and special program support; and (5) Providing a working laboratory of urban education which will facilitate understanding of how to continually improve the urban educational process.

1971-Statewide Council on Long Range School Finance Planning.[1] This Committee is to make recommendations for public school support. Topics to be covered: (1) An administrative accountability formula; (2) Plan for property tax relief; (3) Equal educational opportunity; (4) Simplification of accounting, record-keeping and reporting procedures; (5) Rationale for school district goals and objectives; (6) Method of expenditure control. Report due February 29, 1972. Contact: Wayne Burnette, Chairman, Sacramento, California.

1971-Commission on Educational Reform.[1] Appointed by Governor. Report filed January 1, 1971, recommendations made: (1) California should establish statewide tax on all real and personal property; (2) Educational funds should be directed to providing equal educational opportunity; (3) All legislatively mandated programs should be funded by state and implemented following a one-school-year deferrment; (4) Management audits should be made available to districts on request; (5) Legislation should be passed to enable school bond elections to be passed by simple majority; (6) Parents of students attending nonprofit private schools should be granted tax relief; (7) Legislation should be adopted requiring school districts to adhere to a specified time line for planning; (8) California State Teachers Retirement Fund should be placed on an actuarily sound basis. Contact: J. Stanley Green, Executive Secretary.

COLORADO

1969-Committee on Fiscal Policy. Constitutional amendment for statewide, state-collected sales and cigarette taxes for localities; broadened sales tax base to include services; more state funds for schools; state financing of court costs; disallows deduction of federal income tax payment for state income tax purposes.

1971-Legislative Council Committee on Public Education. A special study was mandated by HJR 1033, 1971 Session. Report issued November 1971: "Public Education -- Recommendations for 1972" Research Publication No. 177. Recommendations made: (1) Strengthen Boards of Cooperative Services; (2) Support programs which emphasize the prevention of dropouts through early diagnosis of potential dropouts followed by specific programs; (3) Recommendations (a) providing for lease arrangements for school buildings, (b) requiring developers to submit plans for meeting educational facility needs, (c) exempt school bond interest from Colorado income tax increase, (d) increase from

Colorado
(continued)

two to four mills the allowed levy for capital reserve fund of school districts, (e) establish a school bond guarantee loan fund, (f) direct the Colorado Department of Education to provide advisory assistance to local school districts in the planning and construction of educational facilities. Sample bills were provided with each recommendation. Contact: Senator Chester K. Enstrom, Chairman, Committee on Public Education.

1972 Legislative Council Committee on State and Local Finance. Directed by HJR 1046 to conduct a purposeful study of public school finance and related property tax problems. The committee is to submit to the first session of the 49th General Assembly a new plan for the financing of public schools which will adequately provide for the funding of education programs, reduce the dependence upon property taxation for financing public schools, provide equity in the distribution of property tax burdens and assume local control in the operation and management of public schools. Contact: Joe Douglass, Legislative Liaison, Colorado Department of Education, (303) 892-2291.

1972-Legislative Council Committee on State and Local Finance. Directed by SJR 10 (pending) to undertake the "tax profile study" pursuant to HB 1128 enacted during the 1972 Session of the General Assembly. Specific charges: (1) Gather and prepare data which might be useful in revision of present school finance formula; (2) Conduct hearings to discuss alternative plans for raising necessary revenue and the development of formulae for the distribution of funds which could meet constitutional tests established by recent court cases; (3) Develop appropriate revenue projections and tax impact studies to inform the General Assembly of the fiscal and economic implications of alternative revenue sources which are feasible for the financing of public schools in Colorado. Contact: Joe Douglass, Legislative Liaison, Colorado Department of Education, (303) 892-2291.

CONNECTICUT 1970-Connecticut State Revenue Task Force. Recommended: piggyback income tax of not more than 20% of federal income tax, except that capital gains be taxed as ordinary income and interest on state and local bonds other than those of Connecticut be taxed; declining credit for dependents; broadened sales tax base; repeal property tax exemptions for veterans except those disabled; when feasible, replace other property tax exemptions with a system of direct payments; uniform statewide assessment ratio; authorize local charges in lieu of property taxes on eleemosynary institutions. Contact: Connecticut Office of Legislative Research, (203) 566-4150.

1971-Commission on Services and Expenditures. Appointed by Governor. Contact: Edwin D. Etherington, Chairman, Old Lyne, Connecticut 06371. Copy of Report: Governor's Office, State Capitol, Hartford, Connecticut, 06115.

Connecticut (continued)	1972-	State Board of Education adopted policy calling for full state funding of education. Contact: Dr. William J. Sanders, Commissioner of Education, (203) 566-5371.
	1972-	Connecticut Equal Educational Opportunity Financing Committee -- HB 5427 (FAILED). Contact: Connecticut Office of Legislative Research, (203) 566-4150.
DELAWARE	1971-	Governor's Action Force on School Construction Costs in Delaware. A statewide study on building costs that recommended reducing space allowances for school facilities, updating of the bid laws, incentive payments for architects and contractors, and development of standards for structural, mechanical and electrical components, etc. Single copies of "Report on Recommendations for Reducing School Construction Costs in the State of Delaware" available on request. Contact: Dr. Wm. B. McCormack, Chairman, 3 Wordsworth Drive, Hyde Pard, Wilmington, Delaware, 19808 or Mr. Robert L. Durkee, Director, School Services Section, Department of Public Instruction, Townsend Building, Dover, Delaware, 19901, (302) 678-4601.
	1972-	Delaware Education Finance Committee. Appointed by State Board of Education. The Committee is to report to the Board of Education in the fall of 1972. Contact: Dr. Kenneth Madden, Superintendent of Public Education, P. O. Box 697, Dover, Delaware, 19901 (302) 678-4601.
FLORIDA	1970-72-	Citizens' Committee on Education. Appointed by Governor. "Alternate Models for the Governance of Education in Florida;" an interim report, was issued September 22, 1971. Part two, a report to include finance is due late in 1972. Contact: Dr. Bill Maloy, Governor's Office, (904) 222-1900.
	1971-	Appropriations Committee, Florida House of Representatives.[1] Report issued: "A 'Fair Share' Plan for Florida Schools." Note: a three-page summary can be found in the President's Commission report. Contact: Gilbert L. Gentry, Chief, Bureau of District School Finance, Florida Department of Education.
GEORGIA	1972-	School Tax Revision Study Committee. Formed in accordance with House Resolution 783-1878. Note: Resolution passed House, did not clear Senate because of heavy work load and mandated 40-day session. The Committee will consist of 23 members representing the Legislature, State Department of Education, State Government and various educational agencies. The Committee is to take into consideration the various court decisions on equal educational opportunity and the present distribution formula especially as related to large metropolitan school districts. Contact: Representative Robert Farrar or Larry Gess, Governor's Office, (404) 636-1735.

Georgia (continued)	1972-Governor's Committee on Student Financial Aid. Seventeen members to be appointed by the Governor representing Legislature, Department of Education, Scholarship Commission, University System, all postsecondary institutions (collegiate and vocational), citizens at large and lenders. This committee is charged with (1) Assessing present situation and need; and (2) recommending how this need can be met. Contact: Larry Gess, Governor's Office, (404) 656-1735.
HAWAII	1969-State Department of Education Study.[1] Report issued: "Master Plan for Public Education in Hawaii." Recommendations include: (1) Development of an effective evaluation of students and Department of Education performances; (2) System of financial forecasting; (3) Need for PPBS; (4) Statewide information system; (5) System of management reporting; (6) Consideration of building a department of education endowment fund; (7) Utilization of computer technology for planning and management of education; and (8) Development of a department of education "Strategic Planning Center." Contact: Ralph H. Kajosaki, Superintendent.
IDAHO	1971-Committee to Study One Hundred Percent School Funding. Appointed by the Legislature. The committee drafted HB 644 which passed House and failed in Senate. The Committee was deactivated. Contact: Dr. Roy Truby, Idaho State Department of Education, (208) 284-3300.
	1971-Committee on School Formula Funding. Contact: Legislative Council, Room 420, State Capitol, Boise, Idaho, 83707.
	1971-Study of School Equalization as presented in HB 249. Contact: Myran H. Schlechte, Director, Idaho Legislative Council, State Capitol, Boise, Idaho, 83707.
ILLINOIS	1968-69-Governor's Revenue Study Committee. Flat-rate income tax on both individuals and corporations; add selected services to sales tax base.
	1971-72-Superintendent's Advisory Committee on School Finance. Appointed by Michael Bakalis, Superintendent of Public Instruction. This Committee consists of 16 experts in school and public finance. Eleven are university professors representing Illinois' major public and private institutions of higher learning, three are school superintendents, and two are staff members of the Office of the Superintendent of Public Instruction. Chairman: Dr. G. Alan Hickrod, Illinois State University. The first meeting was held in January 1972. Report No. 1 was issued March, 1972 -- "Definition, Measurement and Application of the Concept of Equalization in School Finance" by G. Alan Hickrod. Report No. 2 was issued April, 1972 -- "Needed Research in School Finance" by William P. McLure. Report No. 3

Illinois (continued)

Memorandum by William P. McLure to the Superintendent's Advisory Committee outlining steps in a developmental process leading to uniform equalization of expenditures per unit and total utilization of a state administered tax system supplemented by federal revenue. Report No. 4, "School Finance Equalization Lawsuits: A Model Legislative Response" by Arthur E. Wise (November 1971).

1971-72-House Financing of Education Study Committee. Created by HR 542. This Committee consists of eight members, four to be appointed by the Speaker of the House, and four by the Minority Leaders of the House. This Committee is to study, evaluate, and recommend proposals to finance the public schools and the junior colleges with revenue other than local property taxes. Interim report due on or before December 1, 1972. Final report due February 1, 1973.

197 - Governor's Commission on Schools. Appointed by Governor Richard B. Ogilvie. This Commission consists of four task forces: (a) School Finance; (b) Organization and Structure; (c) Classrooms; and (d) Business Management Practices. Contact: Paul E. ulick, Assistant Director, Finance and Claims Section, Office of the Superintendent of Public Instruction, Springfield, Illinois, 62706, (217)525-5256.

INDIANA

1968-Commission on State Tax and Financing Policy. Recommended: increase state share of school costs to 50%; adopt much more equalizing plan of school aid distribution; income tax credit declining with income for property taxes paid; eliminate property tax on inventories and intangibles tax; replace personal property tax on motor vehicles with an excise tax.

1970-School Finance Study for Commission on State Tax and Financing Policy. Recommended state assumption of costs of school operation, maintaining local control, funded by changing present flat-rate income tax to a graduated tax for both individuals and corporations.

1972-Study Committee on Educational Finance. Appointed by Legislative Council. Eight members from House and Senate equally represented. Chairman: Senator John Hart, 5141 North Madison Street, Indianapolis, Indiana. Staff will issue first report to committee on approximately June 1, 1972. Title: "Property Tax as a Means of Financing Public Schools" Contact: Phil Goddard, Indiana Legislative Council, (317) 633-6570.

IOWA

1971-Taxation Study Committee of the General Assembly. Recommended: increase progressivity of income tax; adopt sales tax credit; impose 1% tax on interest and dividends; adopt income tax credits for property tax paid by elderly; replace personal property tax with tax on AGI of all businesses and professions; provide state aid to finance major share of welfare programs; change state aid to schools from current equalization aid scheme to foundation grant program with state funding initially at 80% of average per-pupil expenditure; require local funding for schools to be based on both property tax and a local income tax. Contact: Senator Ralph Potter, Marion, Iowa.

Iowa (continued)	1972-Legislative Interim Study Committee. Charged with studying (1) School governance at the district and intermediate level; (2) School finance. Chairmen: Representative Charles Grassley and Senator Charlene Conklin. Contact: Dick Smith, Assistant Superintendent of Instruction, (515) 281-3436.
KANSAS	1971-Joint Committee on School Finance. Appointed by the Legislature. Chairman: Senator Joseph Harder. Recommendations: (1) Statewide income tax; (2) Total state aid should be at least 40% of operating costs; (3) State share guarantee should be based on per pupil costs; (4) Local "ability" should include income and property; (5) property tax relief by combination of school district income tax, increased state aid and realistic budget control on operating expenses; (6) Two bills proposed. 1972-Special Committee on School Finance (Standing Committee) will study general problems related to school finance and report to the 1979 Legislature. Contact: J. W. Drury, Director of Research Department, Kansas Legislative Coordinating Council, (912) 296-3181.
KENTUCKY	1972-SJR 8 passed by Legislature directing the Legislative Research Commission to conduct an in-depth study with emphasis on property tax. Contact: Ray Corns, Director, Legal Legislative Services, Kentucky Department of Education, Frankfort, Kentucky, 40601, (502) 564-4770.
LOUISIANA	1972-Superintendent's Task Force on School Finance. Appointed May 1972 by State Superintendent of Education. The Task Force contains a cross section representation of legislators, educators, and lay people. The Task Force is to study and make recommendations on school finance with reference to recent court decisions. Chairman of the Task Force is Senator Eagan. Contact: Louis J. Michot, Superintendent of Education, (504) 389-5109.
MAINE	1972-Committee of the Legislature to Study the Financing of Public Education in Maine. Established by joint resolution. Contact: Dr. Michaelson, Department of Education, (207) 289-2321.
MARYLAND	1972-Task Force to Study and Recommend Changes in the Manner by Which the State Funds Public Education. Established by the Governor in accordance with HJR 101. The Task Force is to develop implementing legislation. The charge includes: "to provide equal educational opportunity through equal tax burden for equal educational benefit." Contact: Mr. Hamilton, State Department of Education, (301) 383-3300.

MASSACHUSETTS	1971-Subcommittee on Equal Educational Opportunities. Report issued December 1971. This report ruled out full state funding as impractical at the present time, but stated an imperative need for equalizing educational opportunity. The study recommends the continuation of the state's percentage equalization formula, reimbursing districts for the costs of education in inverse proportion to the relative wealth of the district. The basic percentage recommended was 40%, with a minimum of 10%. Vocational and special education would be reimbursed separately, but on the same formula. A minimum effort would be required from all districts. Contact: Dr. Neil Sullivan, Commissioner of Education, (617) 727-5180.
	1970-72-Special Commission to Develop a Master Tax Plan. Periodic reports have been issued. Chairman: Senator Robert Cowley. Contact: Daniel O'Sullivan, Director, Massachusetts Legislative Research Bureau, (617) 727-2345.
MICHIGAN	1969-"Equal Quality Plan:" A report prepared by the Michigan Association of Professors of Education Administration. Contact: Dr. Russel E. Wilson, University of Michigan, (313) 764-8416.
	1972-Special Committee on School Aid Distribution. Appointed by Senate Education Committee as a result of SR 117: Senator Gilbert E. Bursley, Chairman, Senate Education Committee. Interim Report February 3, 1972: "An Analysis of the Governor's Proposals for Financing Elementary-Secondary Public School Operating Costs and a Comparison with Democratic Party Proposal." Governor Milliken's proposed constitutional amendment will: (1) Reduce the present constitutional property tax limit from 50 mills to 26 mills, then freeze the lower limit, constitutionally; (2) Assure constitutional limits on the taxing power of local units of government; (3) Provide up to six mills, by vote of the people for enrichment of local education programs and that millage will be equalized by law so each mill will yield the same amount in every district; (4) Guarantee 4 1/2 mills to be divided, by law, among vocational, compensatory and special education, and intermediate school districts; (5) Mandate the legislature to "establish a program of general state taxation and a method of distributing funds for the support of elementary and secondary public school districts to assure equal and quality educational opportunity for all students. Contact: Mr. Hornburger, Department of Education, (517) 373-2878.
	1972-"School Finance Reform in Michigan - 1971:" a report prepared by Executive Office, Bureau of Programs and Budget, Technical Report C 16. Contact: John T. Dempsey, Director, Bureau of Programs and Budget.

MINNESOTA 1972-Education Finance Study Committee. Appointed by the Commissioner of Education with approval of Governor's Office. The Committee consists of 34 members representing the House and Senate education committees, business, lay citizens and school administrators. The Committee is to study the new formula as developed by the Legislature as a result of the Minnesota Court ruling. They are also to study new "weighting" concepts. All reports will be released by the Chairman: Dr. VanMueller, University of Minnesota, School of Administration. Final report due October, 1972. Contact: Howard B. Casmey, Commissioner of Education, (612) 296-2358.

1972-State Planning Agency staff report: "Minnesota's School Financing Plan" -- a review of action taken by the 1971 session of the Legislature concerning School Finance in Minnesota. Contact: Jerrald Christenson, State Planning Agency, (612) 296-6662.

MISSISSIPPI Governor's School Finance Study Group. A study group consisting of educators and lay people was appointed by the Governor to study school finance problems as related to the Serrano Court decision. Chairman: Dr. Frank Luvall, Mississippi Department of Education, (601) 354-6934.

MISSOURI 1972-Statewide Committee to Study School Finance. A broadbased Committee of approximately 104 members appointed by the Commissioner of Education and State Board of Education to study school finance. Four subcommittees are active: (1) Sources of school revenue; (2) Distribution of school revenue; (3) Structure of school districts; (4) Educational programs. Co-chairmen: Dr. Delmar Cobble, Department of Education and Dr. Loren Townsend, former dean of School of Education of University of Missouri. Contact: Dr. Arthur L. Mallory, Commissioner of Education, (314) 635-8125.

1972-Joint Interim Committee (Committee on Taxation). This interim Committee was established by SCR's 23 and 25. It will consist of equal representation of the House and Senate and is charged with studying the taxing laws of the state in light of recent court decisions on property tax support of public schools. Contact: William R. Nelson, Director of Research, Missouri Committee on Legislative Research, (314) 636-2186.

MONTANA 1972-"Study of Basic Education Program Financing Methods in Montana" (Part One); and Part Two, Study No. 1 -- "A Study of Funding Schemes for the Foundation Program" issued by the Department of Public Instruction in Working Draft Form, May 1972. Contact: Michael Billings, Director, Finance Support for Schools, Office of the Superintendent of Public Instruction, (406) 499-2511.

NEBRASKA	1972-	Legislative Council Interim Committee on State Aid. This Committee will study school finance in Nebraska and the implications of the Serrano and other court decisions. Report will be issued to the Legislature in January, 1973. Chairman is Senator Jerome Warner. Contact: Jack Rodgers, Director of Research, Legislative Council, (402) 471-2224.
NEVADA	1971-	The Education Subcommittee of the Nevada Assembly Ways and Means Committee devised legislation in the 1971 session containing a mechanism that would "trigger" additional money for public schools for the second year of the biennium if certain, specific definitely knowable financial conditions were found to exist at the end of the first year. As a result of this innovative legislation, authored by Assemblymen Frank Young and Jack Schofield of the Subcommittee, and the better than anticipated Nevada economy in 1971, every school district in Nevada will have $7 per pupil more to spend next year. Contact: Mr. Liston, Nevada Department of Education, (702) 882-7330.
	1972-	The Nevada State Department of Education is charged by statute to make an ongoing study of public school finance in Nevada. Contact: Mr. Liston, Nevada Department of Education, (702) 882-7330.
NEW HAMPSHIRE		Interim Legislative Task Force appointed as a result of HB 70, 1971 Session. The Task Force consists of legislators, Department of Education staff and superintendents. The Task Force is to report prior to the 1973 Legislative Session. Chairman: Paul Fillion. Contact: Newell J. Paire, Commissioner of Education, (603) 271-3494.
NEW JERSEY	1970-	Permanent State Aid Study Commission. Created as a result of state law: Chapter 233-1970. This is a standing committee which collects information related to school finance and makes recommendations to the Legislature. Chairman: Assemblyman John Ewing. Contact: Paul Mueller, Legislative Service Commission, (609) 292-7734, or Dr. Victor Podesta, Assistant Commissioner of Education, (609) 292-4452.
	1972-	Governor's Tax Policy Committee. This report recommends full state funding of a standard quality education, financed by a statewide property tax levied at a rate of $1.00 per $100 of equalized valuation. The state would also share voter-approved local leeway expenditures in inverse proportion to the wealth of a district. Districts spending below the approved level would be encouraged to increase expenditures; districts spending above the level would be allowed to continue. Local control of all other aspects of education would be retained. These recommendations have been translated into A 1272 for consideration in Special Legislative Session. Sections 6 and 7 of

New Jersey (continued) A 1272 provide that the expense cost per pupil schedule submitted by the Commissioner shall be deemed approved by the legislature at the end of a period of 45 calendar days unless between the date of transmittal and the end of the 45-day period the Legislature passes a concurrent resolution stating the Legislature does not approve the expense cost per pupil schedule submitted by the Commissioner and establishing an alternative expense cost per pupil schedule. Contact: Paul Mueller, Legislative Service Commission, (609) 292-7734.

NEW MEXICO 1972-Legislative School Study Committee prepared HB 39 relating to school taxation. This bill was not passed.

1972-Interim School Study Committee (Legislative School Study Committee) and Interim Tax Study Committee were authorized by Senate Memorial #22 to study and make recommendations with regard to the levy and allocation of property taxes. Findings and recommendations are to be made to the first session of the 'st Legislature. Contact: Ronald W. Coss, Director, Legislative School Study Committee, 329 State Capitol, Santa Fe, New Mexico, 87501.

NEW YORK 1972-New York State Commission on the Quality, Cost and Financing of Elementary and Secondary Education (The Fleischmann Commission). This Commission recommended full state funding to eliminate inequality in raising the distributing revenue. Districts would be "leveled-up" to the 65th percentile of operating costs over five years, with districts above that level maintaining current expenditures. Local option levies would be abolished, and distribution of funds would be by weighted enrollment. Revenue would come from a uniform-[illegible] property tax initially, with reliance shifting to the income tax as soon as possible. The Commission also called for greatly increased federal aid. (A more detailed summary of this report is available.) Contact: Chairman Manly Fleischmann, 800 Second Avenue, New York, New York, 10017.

NORTH CAROLINA 1972-Education Finance Committee. State Department of Education Study Committee established by the State Board of Education to study existing allocation procedures and make recommendations for revision of allocation procedures. State Department staff members and local district superintendents serve on the Committee.

1972-Education Finance Study Committee. A comprehensive Study Committee co-sponsored by the State Board of Education, North Carolina Association of County Commissioners and the State School Board Association to study total taxation problems and educational finance allocation procedures in the light of recent "Serrano-type" court decisions. This Committee will consist of at least 50 members representing lay professional and business groups in the State. First meeting will be held in the summer of 1972. Contact: Dr. A. Craig Phillips, Superintendent of Public Instruction, (919) 829-3813.

NORTH DAKOTA 1972-Interim Legislative Educational Education Committee. This group is currently re-examining the School Foundation Program in the light of recent "Serrano-type" court decisions. Contact: Mr. Howard Snorteland, Department of Public Instruction, (701) 224-2261.

1972-NEA Committee on Educational Finance and the North Dakota Education Association have released a report "To Strengthen North Dakota School Finance" issued in May 1972. Contact: Adrian Dunn, Assistant Executive Secretary, (701) 223-0450.

OHIO Legislature in Session. Establishment of Finance Study Commission is expected. Nothing established as of June 1, 1972. Contact: Paul E. Spayde, Assistant Superintendent of Public Instruction, (614) 469-3708.

OKLAHOMA 1972-Oklahoma Commission on Ad Valorem Tax Structure and Public School Finance. Created by SJR #45. This temporary Commission will consist of twenty members: ten appointed by the Governor, five by the President Pro Tempore of the Senate and five by the Speaker of the House of Representatives. The Commission is to study, evaluate and recommend possible revisions of Oklahoma's current methods of financing public schools by means of the property tax. The Commission is to consider all the recent judicial decisions in states with taxing systems similar to Oklahoma and recommend guidelines for revision of financing methods to the end that the goal of equal protection under the law is providing equal education for all students is met. Report to be filed with the first session of the 34th Legislature. Contact: Senator Lonnie Abbott, State Capitol, Oklahoma City, Oklahoma, 73105.

1972-Interim Study of the Expenditure of General Fund Money by School Districts for the Purchase of Land or for the Construction of Buildings or for Additions to Buildings. Created by Senate Resolution #96. The Committee of Referral (Executive Committee of State Legislature) is to analyze existing law, local problem areas, investigate possible alternatives and recommend politically feasible remedial legislation. Report is to be filed with the first session of the 34th Legislature. Contact: Senator George Miller, State Capitol, Oklahoma City, Oklahoma, 73105.

1972-Interim Study of the Amount of General Fund Surplus a School District Should Carry Over at the End of the Fiscal Year. Created by SR #99. The Executive Committee of the State Legislature is to refer to appropriate standing committee this study. Presently Oklahoma has no restriction on the amount of general fund surplus a school district may have. Report is to be filed with first session of 34th Legislature. Contact: Senator George Miller, State Capitol, Oklahoma City, Oklahoma, 73105.

OREGON	1972-Governor's Education Task Force. Chairman: Dale Parnell, Superintendent of Public Instruction. Governor's School Finance Task Force. Chairman: Robert Davis, Executive Assistant to the Governor. Both of these groups will review components of Governor McCall's proposal for state tax and educational reform. 1972-Interim Legislative Committee on Taxation. Chairman: Victor Atiyeh. 1972-Interim Legislative Committee on Education. Chairman: Jason Boe. Contact: Mike Carpenter, (503) 686-3495.
PENNSYLVANIA	Commission on a Charter for Basic Education. It is anticipated that this Committee consisting of approximately 35 members would be appointed in May of 1972. Seven preliminary areas of study have been outlined: (1) Curriculum; (2) Organization for instruction; (3) Management; (4) Staffing; (5) Supporting staff; (6) Governance; (7) Finance. Contact: John Kennedy, Chief of Staff for Study Commission, (717) 787-6455.
RHODE ISLAND	1972-Two reports have been released by the Commissioner of Education: (1) "Some Tentative Proposals for the Finance of Education in Rhode Island." (Out of Print); (2) A Second Step Towards State-wide Funding for Rhode Island's Public Schools." 1972-Governor's Commission to Study School Finance. Created by passage of H5481. The 13 member Commission is to study federal findings (President's Commission Report) and develop a comprehensive financial plan for public education in Rhode Island. Report due January, 1973. Contact: Dr. Cynthia Ward, Education Resource Specialist, Department of Education, (401) 277-2681.
SOUTH DAKOTA	1972-Task Force to Study School Finance to be established by Superintendent of Public Instruction, Dr. Don Barnhart, the South Dakota State Board of Education, South Dakota School Administrators, South Dakota Education Association, and Associated School Boards of South Dakota and the Governor of South Dakota. Contact: Mr. Clayton, South Dakota Department of Education, (605) 224-3448. 1972-Interim Education Committee conducting a study to recode South Dakota Laws as they pertain to education. Part of the work will deal with school finance. Local Government Study Commission (Legislative Research Council). A sub-committee of this Commission is charged with studying the effects of "Serrano-type" court decisions. Contact: Michael P. Ortner, Director, Legislative Research Council, (605) 224-3251.

TENNESSEE 1972-Tax Modernization and Reform Commission for Tennessee. Created by HB 933, substituted for SB 2168, now Public Chapter 746. The Commission is composed of 21 members including the Commissioner of Finance and Administration, the Comptroller of the Treasury, Commissioner of Education, two members of the House of Representatives, two members of the Senate, 14 members broadly representative of public and private interests including local government. The Commission is to study alternatives to present state and local tax structures. The specific aspects of the charge include: (1) Alternate methods of financing public school systems; (2) Fiscal relationships between state and local governments; (3) Methods of making state and local tax structure responsive to economic growth; and (4) Methods of distributing state and local tax burdens equitably. No deadline specified. Contact: T. B. Webb, Assistant Commissioner of Education, Division of Finance and Administrative Services, (615) 741-2971.

TEXAS House Interim Committee on Financing of Public Education. A 22 member Committee supplemented by an additional 22 lay members has been appointed. Regional meetings and hearings are being held.

Texas Research League Study of Foundation School Program Financing. The Lieutenant Governor, alarmed by the near $125 million increase annually in Foundation School Program costs resulting from the acts of the 61st Legislature, asked the Texas Research League to study the state's school finance program. He asked that the focus of the study be ways to meet the state's obligation in the next decade. The League accepted the responsibility and outlined the following study prior to the Rodriguez decision: (1) What has been the effect of the 1969 school legislation to date? (2) What are the prospective trends in school finance for this decade under current law? (3) How could the State control the total cost of the Foundation Program? (4) How could the State shift a larger portion of the local cost of the Foundation School Program to local school districts? (5) How could the State undertake a larger share of school costs and be sure that this would be reflected in lower property taxes? Since the Rodriguez decision, the focus of the study has been changed somewhat to emphasize the seeking of alternative methods for equalizing resources.

Texas State Teachers Association Task Force on School Finance and Program. Chairman: Archie Roberts, Superintendent, Beeville, Texas.

Legislative Property Tax Committee. This Committee was established by the enactment of Sb 414. The group has decided to focus on "Taxable Property -- Exemptions, Assessing, Collecting, and Revision of Tax Suit Rules, and Data Processing." On January 31, 1972, the Committee met in Austin

Texas
(continued)

to organize for work. More than one hundred persons observed as the Committee decided to divide the work into five sections with a group of advisors and a chairman for each section. The following persons were designated as chairmen: Searcy German, Data Processing; Ken Quevereaux, Exemptions; Norman Register, Assessing; Jim Nugent, Collecting; and Jack McCreary, Tax Suit Rules. In addition to organizing for work, the Committee listened to a proposal for financing the public schools of Texas. The proposal, prepared by Searcy German and Elroy Satterlee, was taken under advisement. However, the Committee disavowed any intention to develop and propose a school finance plan but declared that it would monitor the activities of all the school finance committees and stand in readiness to recommend ad valorem tax procedures and laws to implement any school finance plan receiving serious consideration.

Texas Manufacturers Association Public Education Research Committee. The TMA Committee has declared that it is not attempting to develop a school finance plan. The purpose of its meetings has been to become informed regarding issues in school finance. At a later date the group will advise TMA to support or appose various proposals or factors within proposals.

Texas Council of Major School Districts School Finance Task Force. The Texas Council of Major School Districts authorized the appointment of a Task Force to aid the Council in fulfilling its appropriate role as the state seeks solutions to Texas school finance problems. The group met on February 11 to develop a draft of a basic position paper on the school finance issue; the Council has planned consideration of its adoption on March 11, 1972.

Texas Association of School Boards Foundation School Program and Finance Committee. Chairman: Albert D. Brown, Jr., San Antonio, Texas.

Texas Advisory Commission on Intergovernmental Relations. The Commission has been asked by the Governor "to study the total ramifications of the federal court decisions, to coordinate the activities of the many other committees, task forces, research agencies and governmental agencies seeking solutions to the problem of public school financing." It is the Governor's opinion that this is the ideal group, being well funded and broadly representative, to coordinate the efforts of all groups. The Commission met on February 4 and officially adopted the position described by the Governor. The members declared their intent to act as a coordinating body for all school committees and to evaluate the potential impact of proposed plans. Chairman: Mayor Tom Vandergriff, Arlington, Texas.

Texas (continued)	Special Task Force on School Bonds. The Governor's Task Force on School Bonds met on January 6. The group decided to take no action until the court handed down a clarification of its Rodriguez decision. In addition to attacking the immediate problem of restoring confidence in the bond market or seeking alternative methods of retiring outstanding bonds, the group was asked to be an advisory group to the Texas Advisory Commission on Intergovernmental Relations as that group seeks solutions to school finance problems. Joint Senate Committee on School Finance. Subcommittees: Committee to Study Urban Education, Senator Oscar Mauzy, Dallas, Chairman; Committee to Study Vocational-Technical Education, Chet Brooks, Pasadena, Chairman; Committee on State Tax Policy; Special Advisory Committee. The Lieutenant Governor called a joint meeting of the above-named groups on January 6, 1972 and charged them with the responsibility of completing a comprehensive study of Texas school finance problems and alternative solutions. Senator Mauzy was named chairman of the Joint Committee and Senators Mauzy, Moore, and Brooks were asked to meet to plan the next step. Since the January 6 meeting, a generous preliminary budget request has been placed on the Lieutenant Governor's desk. The existing staffs of Senator Mauzy and Senator Brooks are busy getting materials for the study. If the budget is approved, a special staff will be employed. In the news releases by the Lieutenant Governor's office, the Special Advisory Committee was described as an advisory group to the Urban Education Committee; but in the Lieutenant Governors' charge to the Joint Committee, he referred to the Special Advisory Committee as an advisory group for the Joint Committee --the present staff is working on the latter assumption. Contact: Cecil E. Rusk, Executive Director, Texas Association of School Boards, (512) 476-9116.
UTAH	1972-Joint Resolution #9 establishes "A Thorough Study of School Finance Programs for Utah". Participating in the Study will be the Legislative Council, the Local Government Study Group, and the Education Subcommittee of the Joint Appropriations Committee. Contact: Mr. Lewis Lloyd, Director, Utah Legislative Council, (801) 328-5481.
VERMONT	1972-Joint Resolution #69 to study school finance failed. Contact: Vermont Legislative Council, (802) 223-2311.
VIRGINIA	A School Finance Study Commission has been established by the Legislature. The group is charged with reporting back to the Legislature on February 1, 1973. Contact: Dr. Cochran, Virginia State Department of Education, (703) 770-2601.

WASHINGTON 1969-Special Levy Study Committee appointed by the Legislature. Summary Report issued 1971. 1970 Special Session appropriated $410,000 for this Commission.

1972-School Formula Committee. Appointed by Legislature; $50,000 appropriated for this Study. Contact: Perry Keithly, Program Director for Government Research, Washington Education Association, (206) 943-3150.

WEST VIRGINIA 1969-72-Subcommittee on Tax Study. Established HCR #31.

1972-Study of School Finance. Established by JR #25. Co-chairmen: Senator Mario Palumbo and Representative Charles Lohr. Contact: Earl M. Vickers, Director, West Virginia Office of Legislative Services, (304) 348-2040.

WISCONSIN 1971-72-Task Force to Study Educational Finance and Property Tax Reform. Appointed by Governor. Forty-six members; staff director is Mike Harder, 1120A Wilson Street, State Office Building, Madison, Wisconsin. Task Force to make recommendations to 1973 Legislature. Contact: Mike Harder, (608) 266-7297.

WYOMING 1972-Legislative Council is carrying on a study of school finance in Wyoming. Three Study Committees are operating: (1) Needs assessment; (2) Distribution of funds; (3) Available resources. Contact: Ralph E. Thomas, Director, Wyoming Legislative Service Agency, (307) 777-7702.

Finance Study Committee appointed by the State Board of Education. This Committee of approximately 15 people represents the legislative, educational and lay interests of the State. Final report is expected in the late summer of 1972. Chairman: Dr. Sheldon Anderson, Superintendent, Glenrock, Wyoming. Contact: Dr. Dale Lucas, Wyoming Department of Education, (307) 777-7293.

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1. President's Commission on School Finance: Review of Existing State School Finance Programs, Volume 1.

CCP:dr

THANKS!

Bringing together detailed information on this topic could not have been done without the help of many individuals. Of special assistance were: Meg Armstrong, Federal Liaison Assistant in the Utah State Planning Coordinators Office; Dick Merritt of the National Legislative Conference; Terry Smith of the Council of State Governments; Senator E. H. Dean and the Office of the Legislative Analyst in Utah; and the many staff people in the various states that supplied the Education Commission of the States with information.

THE STATES
and
EDUCATION FINANCE

A
1972 OVERVIEW

A report of
The National Governors' Conference
Committee on Executive Management and Fiscal Affairs

ACKNOWLEDGEMENT

Since August 1971, educational finance has been an issue of increasing and intense interest to public officials at all levels of government. This is because state and federal court decisions have invalidated the education finance schemes of five states, and similar suits in thirty other states have highlighted the need for dramatic action in this most important area of state responsibility. These decisions and the debate they have generated have underscored the complexity of the issue.

As public officials search for solutions to the education finance dilemma, they are deluged with a wide array of information from many sources.

This report, prepared for the National Governors' Conference Committee on Executive Management and Fiscal Affairs, provides a broad overview of the problems and opportunities surrounding the education finance issue.

The basic report was prepared by the Education Commission of the States. It provides an essential review of the complex issues which confront us as we seek equal educational opportunity for the children of our states. It was reviewed and slightly modified by members of the National Governors' Conference Staff and the Executive Management and Fiscal Affairs Committee advisory task force.

Particular acknowledgement is tendered to Dr. Wendell H. Pierce, Executive Director, Education Commission of the States and Mr. Clifford L. Dochterman of the ECS Staff for his efforts in preparing the report. In addition, the Committee wishes to acknowledge Mr. John K. Hickey, Director of Legal and Judicial Administration, Council of State Governments, for his work in preparing a legal analysis of the educational finance cases.

Calvin L. Rampton
Governor of Utah

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Part I An Overview

The state role in financing elementary and secondary education is of major importance for the nation's Governors. The Governors are aware that rising education costs, requirements for equal educational opportunity, and accelerating needs for other local services have combined to render the education financing schemes of many states unworkable.

Recent state and federal court decisions have dramatized the education finance dilemma. Since August 1971, state courts in Arizona, California, and New Jersey, and federal district courts in Texas and Minnesota have declared unconstitutional financing schemes which allow interlocal disparities in property-based wealth to be reflected in unequal educational opportunity.

These events have placed the issue of education finance reform squarely upon state government, for there is clear consensus that education is and should continue to be a state responsibility.

Recent national studies reflect this consensus. Reports of the Advisory Commission on Intergovernmental Relations, the National Education Finance Project, and the President's Commission on School Finance all underscore the primacy of state government in education; particularly in the provision of adequate and equitable financing.

The suddenness with which the school finance issue has been thrust into the public eye, together with its inherent complexity, has created confusion as to the effect of judicial action upon state financing schemes. The court decisions have ruled invalid those education finance systems which make a child's educational opportunity dependent upon the greater or lesser wealth of his school district relative to other districts in the state.

While the decisions have invalidated property tax based financing schemes in five states, they have not declared the property tax an invalid source of revenue for education. Nor have they held that an equal amount of money must be spent on each pupil in a state. Finally, the courts have, so far, refrained from directing that a particular system replace those which have been invalidated.

The property tax may continue as a revenue source for education and may be collected locally or statewide. What must be changed is the method in which its proceeds, and the proceeds from other sources are allocated among school districts.

Furthermore, the court decisions suggest that equal educational opportunity need not, indeed ought not, be defined in terms of equal dollar expenditures per student. They suggest that per pupil expenditures geared to different levels of educational need and locational differences in unit costs would not violate the equal opportunity principle.

Within the context of these decisions, the options for state action are many. They range from minor adjustments in equalization formulas for some states to major changes in the state-local taxing system for others. It is clear that no single solution will be appropriate for all states, and the preservation of a wide array of alternatives is critically important.

Confusion has also resulted from the close relationship between school finance reform and property tax relief. There is consensus that equalization of opportunity will raise total educational expenditures significantly. The revenue devices used to meet these new needs, however, will depend upon many factors and will vary greatly from state to state.

While each alternative for financing education is likely to have some impact upon property tax burden, the extent to which relief from that burden becomes an objective will depend upon the fiscal circumstances of each state. The revenues needed to equalize educational opportunity and the revenue devices available to raise them will determine whether property tax relief can be achieved as a consequence of education finance reform.

Presently, only a small number of states have experienced judicial action requiring a new education financing scheme. However, it is likely that most will soon need to respond to the issue. In May 1972, thirty-four states faced court challenges based upon either state or U.S. constitutional guarantees of equal protection; and the Texas school case, *Rodriguez* v. *San Antonio Independent School District* was under appeal to the United States Supreme Court. Whether judicial action is accomplished on a state-by-state basis or through a U.S. Supreme Court decision, the states must clearly move rapidly toward more equitable school financing systems.

Part II The American Approach to Education

The framers of the Constitution did not refer specifically to education. Because of this omission, it has been accepted that the responsibility for education is one of the "powers not delegated to the United States" and consequently is "reserved to the states respectively, or to the people." With the primary responsibility for education resting with the citizens of each state, the state governments have prescribed policies and standards to make the educational enterprise operate effectively.

Although the state has the legal responsibility to provide education for its citizens, most of the operating responsibility has been delegated by the state to local school districts or systems and finally to boards of education and local administrators. The state education agency provides broad leadership, planning, and supervision within the state, but for practical purposes, the delivery system for education is within the jurisdiction of local school districts subject to varying controls over fiscal and operating policies. In the United States there are more than 17,000 school districts, differing widely in size, taxing ability, urbanization, and many other factors. It is this dissimilarity which creates problems when a society attempts to assure all citizens an equal educational opportunity.

Within this framework, the decision-making authority for public schools has been kept close to the people via their elected representatives who are charged with the responsibility of determining educational policy and working with the taxing authority to provide the schools with proper financial support.

Although the states have the responsibility for education, federal involvement has grown sharply in the past two decades. Based largely on the "welfare clause" of the Constitution, federal programs are also a recognition of the fact that educational issues transcend state lines and that the quality of education in each state and welfare of all citizens is of national concern. As a matter of national policy, Congress and the people have accepted an increasing degree of responsibility to meet national priorities through education.

In the past several years we have seen rather substantial federal grants provided to supplement state and local school revenues usually in the form of categorical grants for narrowly defined educational purposes. It is estimated there may be as many as 100 federal educational grant programs in operation in the various states.

At the federal level there are numerous programs being discussed in political and educational circles which might lead to greater financial support for education. New ideas include a federal "value added tax" to supply new school funding, revenue sharing plans to direct federally collected revenues into state and local educational programs, and federal assumption of welfare programs to permit states to allocate existing state money to educational needs. There are promising aspects to all of these programs, just as there are limitations.

Many political observers conclude, however, that it is unlikely there will be any major readjustment in federal funding for education in the immediate future. State leaders who hold out hope for instant and substantial help from federal sources are surely relying upon a slim reed. No matter what federal aid seems to be warranted or forthcoming, the fundamental responsibility to provide and support education still resides with the states and local districts. It is significant to note that the court in Rodrigues v. San Antonio specifically declared that federal funds cannot "rescue" the states by making up the differences in educational expenditures. Federal funds are not considered relevant in determining the equity of educational expenditures within a state.

Education has thus become an interest of federal, local and state levels of government. All three exercise influence and responsibility. Revenues for public school operation come from all three sources. In 1971-1972, state sources provided an average of 40.9% of school revenue; federal sources accounted for 7.1% and local sources provided 52%.

Although school revenue is derived from a variety of tax sources levied by federal, state and local governments, the property tax has received the brunt of recent review and criticism because 98% of school revenue raised at the local level comes from taxes on real property. There is much diversity among the states in school financing patterns. In New Hampshire, for example, 86% of the school revenue comes from local taxes and in North Carolina 19% is derived from local sources. The majority of revenue allocated to education by state and federal governments comes from sales, income, corporate and excise taxes.

The research report of the National Educational Finance Project drew the conclusion that as a practical matter, the vast majority of local school districts are limited in their taxing capacity to the property tax and consequently property taxes have become the principal sources of revenue for local districts, followed by revenue from state sources. There are a few states which provide exceptions to this rule.

As solutions are sought for education's fiscal dilemmas the total tax sources and structure of local, state and federal jurisdictions must be considered. Because we are here exploring the recent court decisions and new problems growing from them, we will largely be directing attention to the various aspects of the property tax as an element of educational finance.

A fourth influence over educational policy and one that has been of increasing importance in recent years, is the judicial system, federal and state. Court decisions on such matters as racial integration, busing, taxes and school admission policy have brought about radical changes through the interpretation of legal and constitutional issues. Court decrees which alter educational processes, operation and authority are fairly well understood by the public, and some are meeting with strong opposition.

While some herald the increasing involvement of the federal courts as progressive and constructive, others contend that the courts are usurping the policy-making functions of the legislative arm of government.

Many educational systems find themselves in structural conflicts. The roles of the local, state and federal bodies in determining educational policies no longer seem clearly defined with the result there is confusion at all levels. The roles become even more obscure when the judiciary involvement increases. This extremely simplified statement does not take into account the growing restlessness of taxpayers, parents and students and others who see a high degree of turbulence within the schools.

Increasingly both educators and the public are calling for "accountability," for more value in return for the huge investments of time, energy and money in the education of the nation's children.

It is in this setting that another complex issue has arisen: the demand for fiscal equity in education. This is the theme of this monograph.

Part III The Anatomy of the Problem

In most states the primary source of local school revenue is the ad valorem tax on real property. As a result there are tremendous differences in the abilities of local districts to finance education. Some districts with substantial wealth, high per capita income and levels of consumption, are able to provide large sums for school expenditures. On the other hand, poorer districts with lower taxpaying ability are only able to provide much smaller funds for education even though they tax themselves at high levels. Substantial variations from district to district are caused by:

a) Differences in ability to raise revenue, depending upon the tax base in relation to the number of pupils served. A district with great natural resources, industry, business or high value residential property will have a much more substantial tax revenue base.

b) The amount of effort the local governmental district puts forth to support education as evidenced by the tax rate levied. A district with a low tax base can raise substantial amounts only if it taxes at an extraordinarily high rate in its effort to provide equal education.

c) Tax overburden which results in certain jurisdictions, such as large municipalities and sparcely populated areas, having unusually high costs to provide services to the population. The municipal overburden takes the form of greatly increased demands for welfare, police and fire protection services, environmental concerns and for higher costs for wages, services and facilities in the large city areas. The percentage of local resources available for education often becomes smaller. Likewise, sparcely populated areas suffer from the necessity to provide services which are often uneconomical because of remote schools, lack of readily available resources, and special geographical limitations.

d) Parental and societal expectations vary substantially from region to region. The perceived needs of families in urban areas are often different from those of suburban or rural families. These needs are manifest in the necessity for compensatory education, vocational programs, transportation, meal services, curriculum variety, special education for the handicapped, and many other variables.

The per pupil expenditures do not tell the whole story in terms of the quality and equality of education. While the dollar is not the only factor in educational equality, school financial experts consider the dollar per pupil expenditure a reasonable and substantial index of differences among school districts. The courts, as in the Serrano case, hold that the burden of proof lies with those who contend that dollars available do not necessarily produce a difference in the quality of education. The wide variations in school districts' effort and ability to support education is one of the major obstacles to equality of educational opportunity in every state.

If school district "A" has an extensive tax base and the citizens tax themselves to the limit prescribed by state law, the per capita expenditure available for each child can be very high--for example, $1500 per pupil. On the other hand, if neighboring school district "B" has a poor tax base and the citizens tax their resources to the state limit, the district may produce a relatively low sum for each child, such as $600. In essence the taxable wealth of the school district is the determining factor in the amount of money available for the schools. In other words, the level of education from district to district is determined by the taxable wealth of the area. Disparity between districts should be the major concern of the states in that it results in inequities in education and usually discriminates against the poor.

To be sure many states have had "equalization formulas" for years. These state minimum foundation programs have not been successful in equalizing school expenditures because they do not equalize tax levy rates among school districts within a state, nor do they consider that equal dollars do not buy equal amounts of educational services in different districts.

Inequalities from district to district are wholly inconsistent with modern day belief in equality and equal educational opportunities for all and have been held by the courts to be a violation of the equal protection clause of the 14th Amendment to the United States Constitution, a document that contains the equal protection clause, but never mentions equality. This issue has created an enormous educational dilemma.

Part IV The Courts and the Cases

On August 30, 1971, the Supreme Court of California issued a decision in the case of Serrano v. Priest which, although it was not a final decision, has had a tremendous impact across the country. Reactions have flooded the press and other media and educators, legislators and other public officials in state and federal governments have become concerned about the decision and its possible effects.

A rapid succession of other court decisions followed Serrano. On October 12, 1971, a United States district court in Minnesota denied a motion to dismiss an action to challenge the constitutional validity of Minnesota's system of financing public elementary and secondary education. The judge retained jurisdiction of the case but deferred further action to give the Minnesota Legislature time to act.

Then on December 23, 1971, a three-judge United States district court in San Antonio, Texas, decided a case brought upon behalf of Mexican-American school children, their parents and all other children in Texas who live in school districts with low property valuations. The court found merit in their claim that the current method of financing for public elementary and secondary education deprives their class of equal protection of the laws under the Fourteenth Amendment to the United States Constitution. The court enjoined the defendants permanently from giving any force and effect to Article 7, Section 3, of the Texas Constitution and the section of the Texas Education Code relating to the financing of education, including the Minimum Foundation School Program Act. Further, it ordered the defendants, the Commissioner of Education, and the members of the State Board of Education to reallocate the funds available for financial support of the school system. Moreover, they were ordered to restructure the financial system in such a manner as not to violate the equal protection provisions of both the United States and Texas Constitutions. The mandate of the court was stayed however for two years to allow the defendants and the Legislature to take all steps reasonably feasible to make the school system comply with applicable law. Meanwhile, the court retained jurisdiction in the action.

Next, on January 13, 1972, a Superior Court in Arizona denied a motion to dismiss a complaint that Arizona's public school financing system violated the equal protection clauses of the federal Constitution and the Constitution of Arizona. The court cited approvingly from Serrano.

Less than a week later, on January 19, 1972, a Superior Court in New Jersey issued a 76-page decision in a case which included city mayors, boards of education and the Board of School Estimate of Jersey City as plaintiffs and the Governor, State Treasurer, Attorney General, the President of the Senate and Speaker of the General Assembly, as well as the Commissioner of Education and State Board of Education, as defendants. The action challenged the constitutionality of the system of financing elementary and secondary schools of New Jersey. Citing the California, Minnesota and Texas cases with approval, the decision, rendered on the merits after trial, held for the plaintiffs and declared the present financing system unconstitutional but provided the declaration would operate prospectively only. It does not enjoin operations under the present system until January 1, 1974, to allow time for legislative action, except that if a nondiscriminatory system of taxation is not enacted by January 1, 1973, then after that date no state monies shall be distributed to the school districts under the minimum support aid and existing State Bateman Act. The court retained jurisdiction of the action for such modification or further order as may be required.

One other case merits attention for its present significance lies in the fact that it rejected the Serrano interpretation of prior decisions of the United States Supreme Court. On January 17, 1972, a Justice of the Supreme Court of New York, County of Westchester, granted several motions of defendants to dismiss a complaint by a taxpayer and parent seeking a judgment declaring unconstitutional New York's existing legislative and constitutional provisions for levying and distributing school taxes. In his decision the Justice described Serrano and Van Dusartz as "exercises in a forensic 'game plan'" and their interpretations of two Supreme Court cases as "judicial augury."

LEGAL PRINCIPLES INVOLVED

Now, having presented the nature of five recent cas. actions which, at least in preliminary decisions, have sustained attacks upon the constitutionality of public school finance systems, and one that did not, let us briefly examine the legal principles and philosophy underlying the decisions. First, to permit some generalization for the sake of brevity, we may proceed upon the rather well-documented assumption that most of the states have generally similar public elementary and secondary school financing systems. Hawaii is a well-recognized exception with one school district and total state financing. To preclude argument or misunderstanding let us recognize also at the outset that the degree of similarity varies considerably among states. Such variations are found in the percentage of reliance upon property tax support, the formulas employed for supplementary state equalization assistance, terminology, state constitutional wording and specific provisions, the authority to issue local school bonds, and in several other particulars. However, save for these exceptions, which in particular instances may present formidable barriers to or may facilitate change, California and the Serrano decision present a very good model and case study of the prevailing system and its alleged inequities. So let us focus upon that situation for a few minutes as described in the Serrano decision.

In Serrano the Court found a fundamental statistic--over 90 percent of California public school funds derive from two basic sources: (a) local district taxes on real property and (b) aid from the State School Fund. The Court found that California educational revenues for the fiscal year 1968-69 came from the following sources: local property tax, 55.7 percent; state and, 35.5 percent; federal funds, 6.1 percent; miscellaneous sources, 2.7 percent.

"By far the major source of school revenue is the local real property tax. Pursuant to Article IX, Section 6 of the California Constitution, the Legislature has authorized the governing body of each county, and city and county, to levy taxes on the real property within a school district at a rate necessary to meet the district's annual education budget. (Ed. Code, §20701, et seq.) The amount of revenue which a district can raise in this manner depends largely on its tax base--i.e., the assessed valuation of real property within its borders. Tax bases vary widely throughout the state; in 1969-1970, for example, the assessed valuation per unit of average daily attendance of elementary school children ranged from a low of $103 to a peak of $952,156--a ratio of nearly 1-10,000."

The other factor determining local school revenue is the rate of taxation within the district. Although the Legislature has placed ceilings on permissible district tax rates these statutory maxima may be surpassed in a "tax override" election if a majority of the distric's voters approve a higher rate. Nearly all districts have voted to override the statutory limits. Thus the locally raised funds which constitute the largest portion of school revenue are primarily a function of the value of the realty within a particular school district, coupled with the willingness of the district's residents to tax themselves for education.

Most of the remaining school revenue comes from the State School Fund pursuant to the "foundation program" through which the state undertakes to supplement local taxes in order to provide a "minimum amount of guaranteed support to all districts." With minor exceptions the foundation program ensures that each school district will receive annually, from state or local funds, $355 for each elementary school pupil and $488 for each high school student.

The state contribution is supplied in two principal forms. "Basic state aid" consists of a flat grant to each district of $125 for each pupil per year, regardless of the relative wealth of the district. "Equalization aid" is distributed in inverse proportion to the wealth of the district.

An additional state program of "supplemental aid" is available to subsidize particularly poor districts which are willing to make an extra tax effort.

The California Constitution provides "The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year." This the Court said "... means one system which shall be applicable to all the common schools within the state. However, we have never interpreted the constitutional provision to require equal spending; we have ruled only that the educational system must be uniform in terms of the prescribed course of study and educational progression from grade to grade."

CONTENTIONS AND DISPOSITIONS

Having examined the factual background and setting let us now examine the contentions and dispositions made of them.

First the chief contention underlying the plaintiffs' complaint was that the California public school financing scheme violates the equal protection clause of the Fourteenth Amendment to the United States Constitution.

In analyzing this contention, the Court pointed out, the United States Supreme Court has employed a two-level test for measuring legislative classifications against the equal protection clause. First, in the area of economic regulation the test is merely that distinctions in classifications drawn by a challenged statute bear some rational relationship to a conceivable legitimate state purpose. Secondly, in cases involving "suspect classifications" or touching on "fundamental interests" the classification is subjected to strict scrutiny. Under the strict standard applied in such cases, the state bears the burden of establishing not only that it has a compelling interest which justifies the law but that the distinctions drawn by the law are necessary to further its purpose.

Applying this second test the California Supreme Court found that the plaintiffs' contention that the school financing scheme classifies on the basis of wealth was irrefutable.

Then the Court considered defendants' contrary arguments:

(a) That through basic aid the state distributes school funds equally to all pupils and through equalization aid it distributes funds in a manner beneficial to the poor districts.

The Court's answer, rejecting this argument, is that state funds constitute only one part of the entire school fiscal system. While the foundation program partially alleviates the great disparities in local sources of revenue, the system as a whole generates school revenue in proportion to the wealth of the individual district.

(b) That neither assessed valuation per pupil nor expenditure per pupil is a reliable index of the wealth of a district or of its residents.

The Court's answer is that the only meaningful measure of a district's wealth in context is not the absolute value of its property, but the ratio of its resources to pupils, because this determines how much the district can devote to educating each of its students.

(c) That the expenditure per pupil does not accurately reflect a district's wealth because that expenditure is partly determined by the district's tax rate.

The Court rejected that argument as meritless, suggesting the affluent districts could "have their cake and eat it too"--having high quality education while paying lower taxes--whereas poor districts, by contrast, "have no cake at all."

(d) That the wealth of a school district does not necessarily reflect the wealth of the families who live there.

The Court responded that the simple answer to this argument is that plaintiffs have alleged that there is a correlation between a district's per pupil assessed valuation and the wealth of its residents and it treated these material facts as admitted by defendants' demurrers in the lower court.

Then the Court added this important pronouncement:

> More basically, however, we reject defendants' underlying thesis that classification by wealth is constitutional so long as the wealth is that of the district, not the individual. We think that discrimination on the basis of district wealth is equally invalid. The commercial and industrial property which augments a district's tax base is distributed unevenly throughout the state. To allot more educational dollars to the children of one district than to those of another merely because of the fortuitous presence of such property is to make the equality of a child's education dependent upon the location of private commercial and industrial establishments. Surely, this is to rely on the most irrelevant of factors as the basis for educational financing.

Another dimension of plaintiffs' equal protection attack was that the system not only draws lines on the basis of wealth but that it "touches upon," indeed has a direct and significant impact upon, a "fundamental interest," namely education. It was urged that these two grounds, particularly in combination, establish a demonstrable denial of equal protection of the laws.

After examining the indispensable role of education in the modern industrial state and comparing it in importance with the rights of defendants in criminal cases and the right to vote--two "fundamental interests" which the Supreme Court of the United States has already protected against discrimination based on wealth, the Court concluded, "We are convinced that the distinctive and priceless function of education in our society warrants, indeed compels, our treating it as a fundamental interest."

In the final step of applying the "strict scrutiny" equal protection standard the Court faced the determination of whether the California school financing system, as presently structured, is necessary to achieve a compelling state interest.

In concluding that it was not, the Court's holding is essentially contained in the following excerpt from the decision:

> We therefore arrive at these conclusions. The California public school financing system, as presented to us by plaintiffs' complaint supplemented by matters judicially noticed, since it deals intimately with education, obviously touches upon a fundamental interest. For the reasons we have explained in detail, this system conditions the full entitlement to such interest upon wealth, classifies its recipients on the basis of their collective affluence and makes the quality of a child's education depend upon the pocketbook of his parents. We find that such financing system as presently constituted is not necessary to the attainment of any compelling state interest. Since it does not withstand the requisite "strict scrutiny," it denies to the plaintiffs and others similarly situated the equal protection of the laws. If the allegations in the complaint are sustained, the financial system must fall and the statutes comprising it must be found unconstitutional.

In a clarifying "modification of opinion" issued October 21, 1971, the California Supreme Court said:

> We emphasize that our decision is not a final judgment on the merits... if after further proceedings the Court (Los Angeles Superior) should enter final judgment determining that the existing system of public school financing is unconstitutional and invalidating said system in whole or in part, it may properly provide for the enforcement of the judgment in such a way as to permit an orderly transition from an unconstitutional to a constitutional system of school financing.... A determination that an existing plan of governmental operation denies equal protection does not necessarily require invalidation of past acts undertaken pursuant to that plan or an immediate implementation of a constitutionally valid substitute. Obviously any judgment invalidating the existing system of school financing should make clear that the existing system is to remain operable until an appropriate new system, which is not violative of equal protection of the laws, can be put into effect.

WHAT SERRANO DID NOT HOLD

In analyzing Serrano and subsequent cases it is important to understand some things they did not hold. First, they have not held that property taxes may not be used for school support, only that existing systems of assessment, distribution and use of property taxes, together with other types of funds, are illegal. Secondly, they have not held that an equal amount of money must be spent for every child. In this connection the New Jersey court expressly disclaimed, "This is not to suggest that the same amount of money must be spent on each pupil in the state. The differing needs of pupils would suggest the contrary. In fact, the evidence indicates that pupil of low socio-economic status need compensatory education to offset the natural disadvantages of their environment." Thirdly, they have not directed that any particular system replace that in being but have left the way open to the Legislatures to proceed to adopt a revision. Illustrative of this again is the language of the New Jersey decision, "Nothing herein shall be construed as requiring the Legislature to adopt a specific system of financing or taxation. The Legislature may approach the goal required by the Education Clause by any methods reasonably calculated to accomplish that purpose consistent with the equal protection requirements of law."

On April 17, 1972, the Attorney General of Texas appealed the Rodriguez case to the United States Supreme Court. Thirty states joined the appeal as amicus curiae. In addition, cases similar to Serrano, Rodriguez, etc., are reported pending in thirty-four states. The outcome of these cases is uncertain but it is clear that Governors and legislatures must be prepared to move swiftly toward significant reforms in state school finance systems.

Part V Issues Created by the Cases

The implications of the court cases have thrown legislators, educators, taxpayers, attorneys, and government officials into confusion and turmoil. Although decreeing that existing school finance patterns do not meet equal protection guarantees, the courts have refrained from either suggesting or establishing guidelines for legislatures to follow. In some states possible solutions may be barred by state constitutions, such as provisions which would prohibit a statewide property tax. In a few other states, leaders are "standing by" in the expectation that solutions will be forthcoming in the form of new money from the federal government. Regardless of the approach being considered, one must be aware that many issues are being raised regarding the future of educational finance in the states and traditional systems of school governance and structure. Some of the most controversial and complex issues are:

1. Educational Equality

Throughout most of the discussions of modern educational finance we see the term "equity" or "educational equality." There are differences in the definitions of these terms. There is a general assumption that universal education and equal education are synonymous. This is not necessarily true. What is an equal education?

While a precise definition has not been offered by the courts, in common terms, educational equality generally means that the quality in education offered to all children by the state is essentially comparable. Thus, the state would provide each youngster with the level of education needed to reach his full potential. We probably will never achieve true "equality", even though we are committed to "approach"it. The courts have said that equity does not necessarily mean equal expenditures per child. In some instances, particularly when we talk about high cost programs for handicapped youngsters, compensatory education, vocational education, and other programs requiring special services, it may cost more to provide the special programs than for typical school curricula if they are to be "equal". For example, the New Jersey court in Robinson vs. Cahill declared that they were not suggesting "that the same amount of money must be spent on each pupil in the state. The differing needs of pupils would suggest to the contrary."

If we are to move toward equity in education we must look at the differences in children, at the differences in their needs and the differences in the educational experiences to which they are exposed. Anomalous as it may seem, equality in education is not achieved by treating different individuals as if they were identical.

2. Dollar Equality.

Although the courts have not required that the state spend the same number of dollars per pupil, the decisions have indicated that the dollar expenditure per pupil does have a bearing upon the quality of education offered. It seems a short step to move from the position that the number of dollars made available for the education of a child cannot be conditioned upon the wealth of any particular community to the next proposition that all children deserve at least equal dollar expenditures (weighted by cost differentials) for the education provided by the state.

3. Upward and Downward Leveling.

Undoubtedly the most controversial issue related to the school finance crisis is whether the states, in seeking a more equal expenditure per pupil from district to district, will find it necessary to lower high per pupil expenditure rates in wealthy districts or raise low rates in poorer districts. In some states the spread between per pupil expenditures from district to district is extremely great.

As a practical matter any attempt to raise all of the schools in a state to the per pupil expenditure level of the highest expenditure districts will undoubtedly require much greater expenditures for education or a reallocation of priorities. This issue will become a subject requiring major policy decisions.

On the other hand, wealthy school districts will not be willing to give their children less than they have had in the past. "Leveling down" the per pupil expenditures is a political hot potato which few legislators will want to handle. The most critical problem arises when the people of a state cannot or will not raise the levels of all of their schools to those of the top schools.

Associated with this issue is the question whether the courts will permit states to create systems for local school districts to exercise any degree of "local leeway" for school enrichment or individuality in financing their school programs.

4. The Future of Local Control.

If states move to a system of greater or full state funding what impact will the centralization of funding sources have upon the local school district? Many contend that the funding source tends to become the source of control and authority. Traditionally, the authority for school operation has been kept close to the people. Can local control continue in the face of increased state financial involvement?

On the other hand, there are those who ask if local control is essential or would necessarily be lost with state funding? The State of Hawaii operates a very creditable educational system centralized in a statewide administration. A case could be made for the proposition that greater state involvement in education makes for elimination of inefficient districts and duplication in the name of local administration and control. There is some evidence that where states have assumed rather substantial financial support for education there has been no major reduction in the level of local decision making authority.

Other proponents of greater state funding contend that if the state took more of the fiscal problems from the local district, those responsible for the actual operation of the schools would have more time to devote to the educational objectives of the children.

5. Collective Bargaining Activity.

Allied with the question of local control is the question of how collective bargaining and salary negotiations could be handled if the primary responsibility for school finance were transferred to the state. Speculation has it that such a process would eventually lead to statewide salary schedules and to teachers bargaining directly with state legislatures. It is difficult to imagine how a local school district could be effective in conducting collective negotiations unless it has substantial authority over fiscal allocations. With the growing strength of teachers organizations and school employee unions, this issue can become of great importance as legislatures seek new systems for school finance.

6. School District Organization.

The question of the appropriate structure and governance system for public schools has been before state legislatures for many years. Many local school districts are too large to be effective and others are too small to be efficient. In many states programs of consolidation have reduced the large numbers of independent local school districts. In other states only very modest efforts have been made toward effective reorganization.

As state legislatures assume a larger role in school finance, they will ask if the number of school districts can be reduced or if the existing districts can be organized more efficiently. It is conceivable that Serrano-type decisions will encourage legislators to reduce the number of separate school districts to spread the existing tax base over a wider geographical area and provide greater equalization.

It is recognized, however, that some states may be unable to reduce or materially change local school attendance areas because of state size or geography and sparsity of population.

7. Impact on Postsecondary Education.

The Serrano-type decisions may well have a major impact upon community colleges and other postsecondary educational institutions. Although the California court did not directly address itself to postsecondary education, there are several implications to be considered.

In many states, and particularly in California, there is a strong similarity between the financing plan of the community colleges and that declared unconstitutional for financing elementary and secondary schools. Following this parallel, it is possible that if the community college financing plan were challenged on the same basis as the Serrano case, that plan would also fall.

On the other hand, it can be argued that because community colleges generally have a substantially larger district than do elementary and secondary school districts, there is not as great a variance in the taxable wealth of the college districts. Many community college districts include both poor and wealthy property in terms of assessed valuation. Under such circumstances it is possible that the Serrano rule would not apply. Also, the voluntary nature of community college attendance may place these institutions under a set of requirements different from the Serrano issue.

Another possible impact upon the colleges would be a major change in the state school financing pattern. If the state moved to a full funding program with a statewide property tax or some similar system, it is possible that the community college districts would come under increased state influence.

Other state public higher educational institutions would not escape the Serrano influence if the state moves to a more complete state funding system. Public higher education has been operated over the years on the basis of statewide funding. If the state finds itself assuming elementary and secondary educational financing programs on a statewide basis, there will be increased competition between higher education and the local schools for the state's educational dollars. The local schools, being closer to their elected representatives, could offer strong competition for available money.

8. Property Tax Relief.

At the outset the Serrano decision was hailed widely as welcome relief for the property taxpayer. As the euphoria disappeared, it became clear that the courts did not do away with the property tax nor find the property tax to be unconstitutional. Obviously, a state legislature can levy a statewide property tax unless prohibited by its state constitution. Furthermore, it is recognized that school taxes are not the only taxes collected on local property. Many non-educational needs such as roadways, police protection, fire protection and utilities, must be met whether or not a new school finance system is adopted or not. The great need for additional money for other public services could quickly absorb any reduction in school property tax levies. It does not necessarily follow that Serrano-type cases will cause any substantial change in the property tax level now assessed on real property.

9. Capital Outlay, Construction and Bonding.

Most of the Serrano-type cases have not gone into the question of expenditures for school construction or other capital outlays. However, in the Rodriguez case in Texas, the court enjoined the defendants from giving any force and effect to sections of the Texas Constitution and Education Code related to the financing of education, including the minimum foundation school program act. Since the education code also includes provisions for construction and capital outlay, the effect of the decision is to rule on the discrimination in the method by which funds are raised for construction in capital outlay.

It is entirely possible, of course, that a statewide capital outlay plan could be administered just as it is in Maryland and five other states at the present time. On the other hand, except for the initial difficulty in setting guidelines, a system of capital construction could be brought into a full-state-funding or substantial-state-funding system.

10. Impact on Big City Schools.

The Serrano, Rodriguez and other cases had an underlying purpose to assist minorities, the poor, and those caught in big city neighborhoods with declining property values. It is ironical that these cases may result in a reduction of the educational muscle needed by inner-city, ghetto type, and remote rural schools. If Serrano means that states will move to some type of statewide distribution of school funds, it is conceivable that big cities will get less money not more. It is generally alleged that urban education is more expensive because of higher salaries, higher land and construction costs, higher operating expenses and more demand for special programs and compensatory education. The economic burden on municipalities is great in nearly every area. Since the wealth of the cities is generally higher than small towns, non-affluent suburbs, and rural areas, the big city schools may be the losers, particularly if "power equalizing" plans are adopted for school finances.

11. Private Educational Resources.

The impact of Serrano on private education is uncertain at this point. There may be little effect, unless a state adopts a system such as a voucher or educational stamp plan, which will permit parents to enroll children in private schools at state expense.

There are other possible implications on private higher education as states tend to become more involved in supporting programs for private higher education.

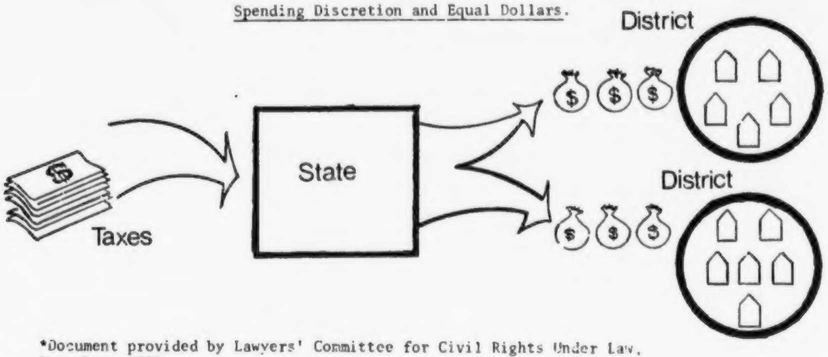
Part VI A Look at Possible Solutions

Lawyers, legislators and school finance authorities have considered a variety of possible systems of taxing and spending which would meet the requirements of the Serrano vs. Priest case, systems that would assure that the level of spending for a child's publicly financed elementary or secondary education is not the function of the wealth of the parents or school district. The following plans are submitted as possible solutions to modern-day educational finance dilemmas. The most comprehensive suggestions have been made by Professor John E. Coons of the University of California School of Law.* The essence of Professor Coons' suggested models are as follows:

1. Centralized State Taxation (Full-State Funding):

These models provide for a statewide system of taxation, which could include a statewide property tax, value added, sales and other taxes as well as the more generalized income tax with progressive tax rates. These models are commonly called "Full-State Funding" systems of school finance. This plan asserts that the state government will

Model 1. Full State Funding of School District with Full Spending Discretion and Equal Dollars.



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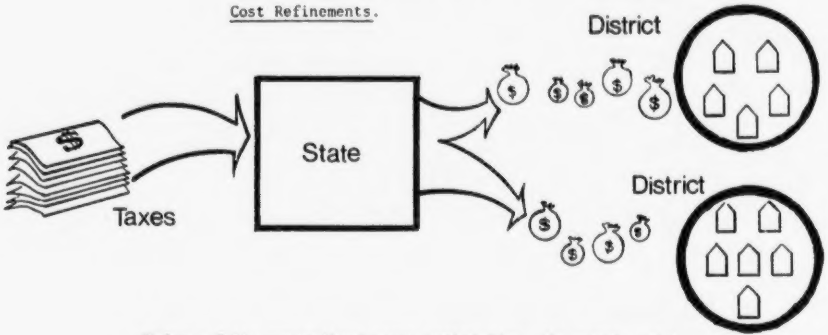
*Document provided by Lawyers' Committee for Civil Rights Under Law, December, 1971.

assume responsibility for financing substantially all of the non-federal outlays for public elementary and secondary education. This concept was largely supported by the recent report of the President's Commission on School Finance.

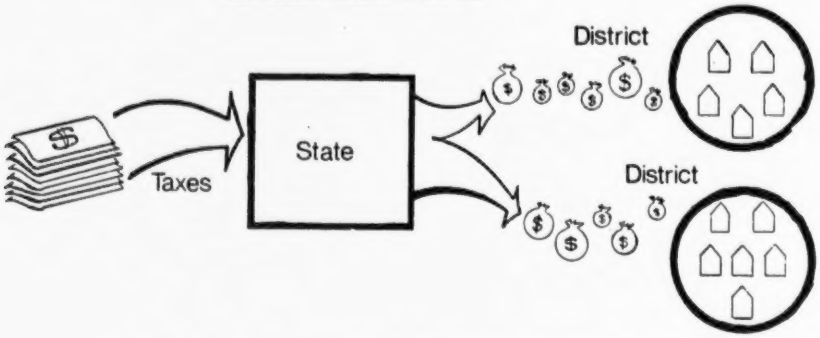
Under a fully centralized state taxing plan, the state would provide each school district with a set sum, such as $1,000 per child in average daily enrollment. The district would have full authority to decide spending priorities, including special education programs for the handicapped and gifted, vocational education and other high cost curriculums. The district would assign the money to the various schools within the district.

Model 2. Full State Funding of School Districts with Full District Spending Discretion and Equal Dollars plus Cost Refinements.



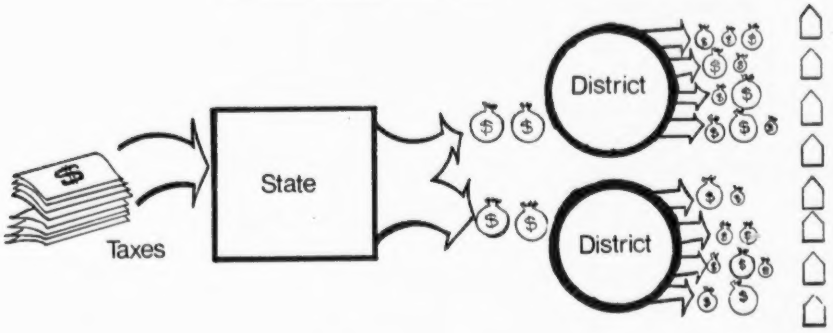
Under a fully centralized state taxing plan, the state would provide each school district with a set sum for each child in average daily enrollment, such as $900. In addition the state would provide increased sums for unusual costs expended by the district. Illustrations of such costs might be; $100 additional "cost refinement" per student living beyond two miles from school; $100 per student for districts in areas with high cost for goods or services: $50 per student in areas with high urban density to account for "municipal overburden." Other cost refinements would be developed to meet the needs of the individual districts or for special educational programs.

Model 3. Full State Funding of School Districts with Full District Spending Discretion Based on Dollar Preferences for Student Types.



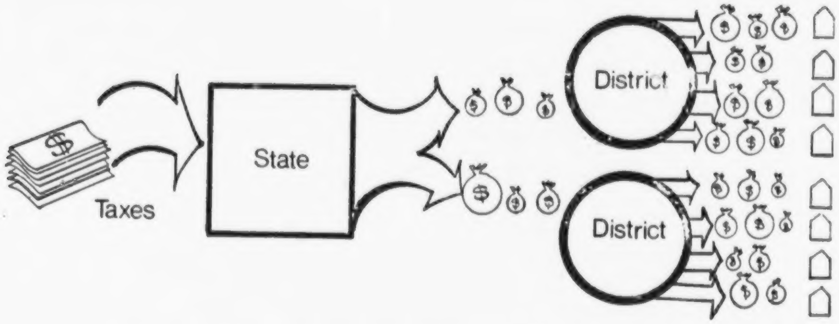
Under this system, the state would collect all taxes and allocate them to the districts on the basis of student categories. A dollar value would be assigned to each student, such as the following: $700 per normal average student; $1000 per under-achieving student; $2000 per handicapped student; $1200 per gifted student. In addition the state would allocate "cost refinements" as suggested in Model 2. Although the state would allocate the funds on the basis of individual student types, the district would have complete discretion to establish priorities for instruction and operation for the schools within the district.

Model 4. Full State Funding of School Districts with Limited District Spending Discretion and Equal Dollars and Prescribed Spending Inequities.



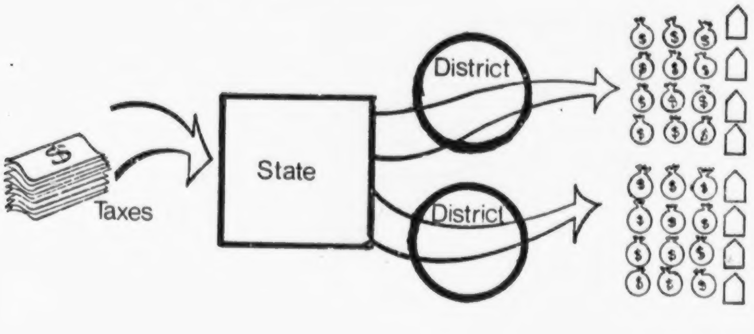
Under a fully centralized state taxing plan, the state would provide each district with a set sum per student, such as $1200. The district would be required to spend differently to meet the special needs of different students and programs. For example, the district might be required to spend $2500 for blind or handicapped children; $1500 for vocational programs; $1400 for gifted and under-achievers. The district would have some discretion for spending within these prescribed programs.

Model 5. Full State Funding of School Districts with Limited District Spending Discretion and Prescribed Categorical Inequity.


Taxes
State
District
District

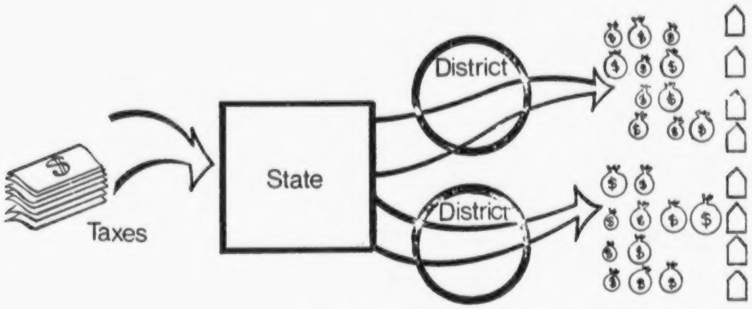
Under a fully centralized state taxing plan, the state would provide districts with funds based on student categories, such as in Model 3, i. e., $700 per normal average student; $100 per under-achieving student, etc. This model provides that the district must spend the allocations according to the categories or priorities specified by the legislature. This model severely limits the degree of local discretion of the district.

Model 6 Full State Funding Through Direct Allocations to the School of Equal Dollars.


Taxes
State
District
District

Under a fully centralized state taxing plan, the state would allocate fiscal support directly to the individual schools. This model rather effectively bypasses the district. The role of the local school district would be largely to provide regional coordination and assistance. In some instances it is quite possible that there would no longer be a function for the district. Each school would receive an allocation, such as $900, per pupil in average daily enrollment for current operating expenses. The school would be given a specified degree of autonomy and discretion in spending the funds. In this model the state assumes responsibility for capital costs which are provided separately as needed in the judgment of the state school superintendent or state board of education.

Model 7. Full State Funding Through District Allocations to the School with Prescribed Categorical Inequity.

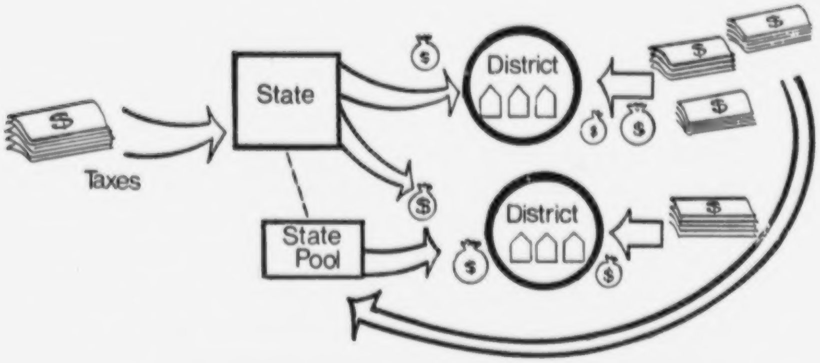


Under this fully centralized state taxing model, the state would allocate fiscal support directly to the individual schools based on the character of the student population, the curriculum and the area cost level of each school. This model would take into consideration some of the student categories noted in Model 3 and the cost refinements of Model 2. The school would have only a very narrow discretion for distributing the funds within the school. In both Model 6 and 7, the state would make provisions for children incapable of functioning within the standard school milieu.

2. Decentralized State Taxation Models or Power Equalization.

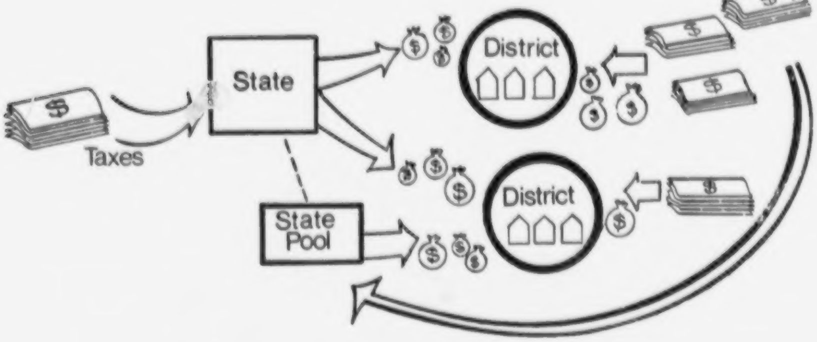
Two models are provided for decentralized taxing systems. These plans call for the state to provide a substantial source of school expenditures supplemented by local taxing effort. The state would supply funds to the local districts in amounts varying according to a legislative formula and the district's taxing effort. "Power equalizing" would enable a poor district to provide the same amount of money per pupil as a wealthy district with the same tax effort, rather than tax itself two or three times as hard.

Model 8. A Decentralized System With a State Flat Grant Plus Local Add-On.



Under this plan, the state would supply each district with a flat grant from state sources of approximately $700. Each district could add on from $25 to $500 per pupil additional according to the rule that for each additional tax mill ($.001) on the $100 taxable value of local property, an additional $25 could be spent. If a mill raised less than $25 per pupil in average daily enrollment (i.e., in districts with less than $25,000 assessed valuation per pupil), the state would make up the difference. If the district raised more than $25 per mill per pupil, the excess would be recaptured by the state and be available for redistribution. Thus, when a wealthy district and a poor district would each add 16 mills to their tax rates, each could spend a total of $1,100 per child. This system has been labeled "power equalization." Essentially, the wealthy districts pay excess funds into a central pool which is used to provide additional money to poor districts.

Model 9. A Decentralized System With a State Flat Grant Plus Local Add-On, Plus Categorical State Add-On.

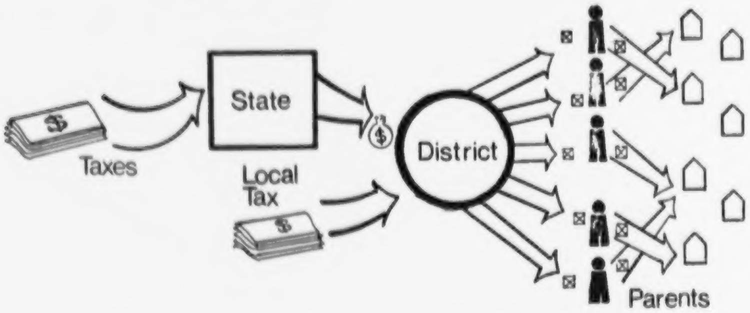


Under this proposal, the state would supply each district with a flat grant from state sources of approximately $700. Each district could add on from $25 to $500 per pupil additional according to the plan outlined in Model 8. However, in addition to the flat grant and locally chosen add-on, the state would provide special aids for any number of categorical adjustments or cost refinements, such as outlined in Models 2, 3 and 4. These could be made through additional flat grants by the states or could be included within the power equalized add-on by adjustments in the formula. For example, a handicapped or under-achieving youngster could be counted twice in the formula.

3. Family Choice School Finance Systems.

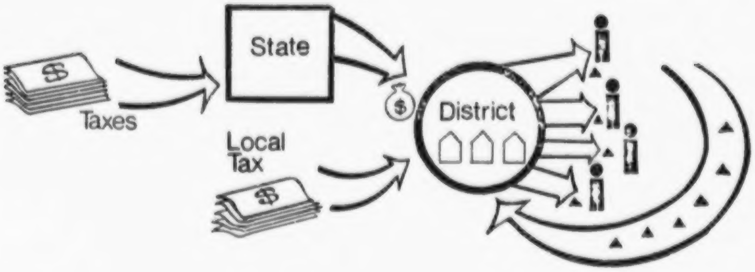
There are a number of hypothetical systems using the family unit as the agent for dispensing all or part of the publicly financed educational expenditure. The systems could be administered through the state or local school district. These systems can be designed to satisfy the requirements of the Serrano case.

Model 10. Voucher System.



Under this system families would receive vouchers for the full cost of public education in the state per child, such as a voucher worth $1,000. The parents would redeem the vouchers in either public or private schools. Under-achievers, handicapped and other special groups would receive larger vouchers to assist in equalizing the quality of education which they would require.

Model 11. School Stamp Supplement.

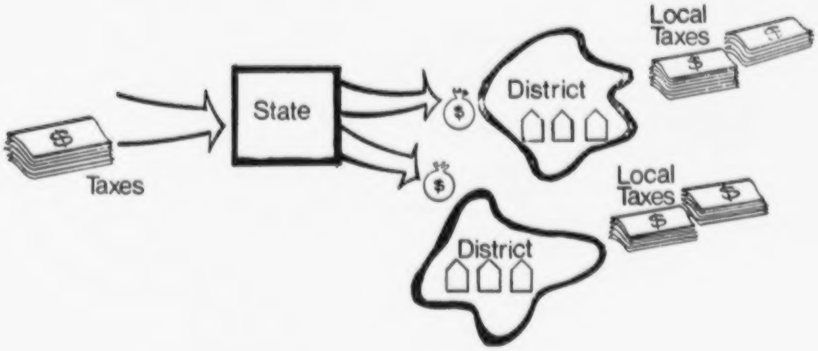


This plan would provide additional educational opportunity for youngsters who are under-achieving for after-school educational experiences. It could be used as a supplement to nearly any of the other financing models suggested above. It meets the Serrano rule in that the educational expenditure is not tied to the wealth of the parents or school district.

4. Other Plans or Structures.

It is possible to devise other combinations of plans to meet the principles established by the courts. Some plans may not be completely realistic, although it is important that they be evaluated by the states. One such plan is noted here.

Model 12. Equal Assessment Districts.



Under this plan a state would be redistricted into geographical areas with substantially equal assessed valuation per pupil in average daily enrollment. The funds could be appropriated for education in a variety of ways, such as the state allocating a minimum foundation program supplemented by local revenue based on property or other taxes. The local property tax revenue would be "equal" in each district if the taxes were levied at the same millage on equally assessed property. It is recognized that any effort to divide the state on an equal assessment basis would be a monumental task and would require a complete reshuffling of existing districts.

Part VII Funding and Taxing Approaches

The educational fiscal dilemma is to a large extent caused by the necessity to provide an adequate funding system to assure equalizing educational opportunity as well as new processes for the collection of educational revenues. The previous chapter noted various possible alternatives for allocating expenditures to fulfill the requirements laid down in the Serrano type cases. Now we consider alternatives for securing revenue which would be consistent with the court decisions.

1. Abandoning the Local Property Tax Base as a Source of Educational Revenue and/or a Statewide Property Tax.

In view of the fact that the courts declared that the public educational spending could not be a function of parental or neighborhood wealth, it is suggested that the states can meet the courts' position by outright abolition of local property taxes for school purposes. In its place, the state could fund education through a combination of state income, sales, state property, and other taxes. Except in states where state property taxes are prohibited, a state could make a statewide levy on local property for public education. The funds collected by the state would be distributed to the school districts.

Statewide collection of property tax assumes an effective and fair method of statewide assessment practices.

2. Removal of Industrial and Commercial Property from School District Tax Base.

Wealth, in the form of industrial and commercial property, is often clustered in a single school district. These special properties tend to give an inflated value to the entire district and provide unusually large revenues, which place such districts in an advantaged position. It is proposed that such property could be removed from local school taxing authority. If states tax such wealth uniformly on a statewide basis, rather than at the local level, funds would be provided to the state to assist in supporting local districts. The wide range in wealth from district to district would be more closely balanced. Under this system local property tax would fall primarily upon residential property and tend to be much more equal from area to area.

3. Full State Funding.

The concept of the state providing full support for public elementary and secondary schools is not new. The State of Hawaii for all practical purposes has been operating on full state funding since it was granted statehood. Alaska and several other states are moving in this direction by increasing the level of state support for education.

Even prior to the Serrano case, many educators and political leaders were advocating, or at least expressing great interest in fully funded educational programs by the states. Support for full state funding is largely based on the flexibility it places in the hands of legislators to balance school finance loads on the several tax bases available to the state and the responsibility it theoretically gives to state education agencies to provide complete equality of educational opportunity for all citizens of the state. Equitable treatment to taxpayers and equity in educational opportunity are very appealing benefits of full state funding.

On the other hand, opponents of full state funding suggest that under state operation schools would undoubtedly be given flat grants or uniform allocations which would not necessarily be effective in improving the quality of educational opportunity. This obstacle could be overcome if states actually take into account the needs of individual school districts and children for educational services. This obviously becomes a very complex administrative task.

Full state funding presupposes that the state will secure revenue from such sources as state income taxes, statewide property taxes and other state taxing bases. Local tax sources would not provide school support under the philosophy of full state funding.

4. Major Shift of Funding Burden from Local to State Sources in an Equalization Formula.

It is possible to design fiscal systems that approach the ideal of complete "equalization" in education expenditures and opportunity. Generally, as the amount of state dollars increases, the level of equalization among districts likewise increases. Most equalization plans are designed after the most commonly used method for apportioning state school funds -- the Strayer-Haig formula. Under this formula, the cost of the foundation program which the legislature desires to guarantee for each district is computed and deducted from the amount of funds which each district can raise locally through a required minimum tax effort. The difference is allocated to the district from state funds. The critical element is the degree of required local effort and the amount of local leeway permitted. If the leeway is very small, a high degree of equalization occurs. The report of the President's Commission on School Finance suggests that local supplements not exceed 10% of the state allocation. It is not certain whether this level of local leeway would be permitted by the courts.

When no local leeway is permitted, complete equalization is achieved because the wealthier districts (with greater taxpaying ability) receive smaller state allocations and poorer districts receive large allocations in order to reach the accepted foundation of school financing for each pupil. This type of equalization assures all youngsters in the state equal financial resources for education. The dollar amount may vary if special education and needs are weighted in establishing the per pupil formula.

It is recognized that this system provides some districts with very low state support and other districts with very high state support. There are obviously some acute political ramifications in the operation of this complete equalization system because the wealthier districts receive the smallest state allocations while paying the most money into the state tax coffers. It is likely to be most successful in a state with only minor imbalances in local taxable wealth per pupil. It is possible, even then, that the state's proportion of the public education expenditure could amount to as much as 80% to 90% in some districts.

Under a system of state equalization it is important to recognize that tax-burden inequalities would remain the same. The plan is intended to achieve dollar equalization, and hopefully equality of educational opportunity, rather than providing special assistance to districts with educational tax overburdens.

Under an equalization formula plan, it becomes the task of the legislature to determine the acceptable level of education to be guaranteed to each child in the state.

5. Increased State Support from New State Resources.

It is possible to approach educational funding by analyzing optional tax sources for the states. Each state must analyze its own economic indicators, e.g., income per capita, per household, etc., to determine its revenue potential for school purposes. Also the state must evaluate its tax bases to determine how much each could produce. Some states will have a greater potential than others for increasing their income because of better industrial, business and natural resources. However, not all sources are used in every state. It is possible some states may be able to develop new tax sources. For example, states without state income tax may find it necessary to initiate such a tax to meet educational expenditures. Other states may move to statewide property taxes.

Some political leaders are looking to the federal government for relief from burdensome welfare programs. They contend that if the federal government will assume growing welfare costs, it will be possible for the states to handle their primary responsibility for education in the states.

6. Increased Federal Support of Education.

Although increased federal funds will not solve the states primary problem of establishing educational equity or meeting the standards of Serrano, such funds will be needed if the states are to meet the rising costs of education. U. S. Commissioner of Education Sidney P. Marland has stated that it was "inevitable -- and on the whole desirable -- that the federal government pay as much as 30% to 40% of the cost of financing schools." There seems to be no question that federal interest in the financial problems of the schools will continue and intensify in the years ahead. The President's Commission on School Finance proposed general purpose federal incentive grants to reimburse states for part of the costs of raising the state's share of total state and local educational outlays above the previous year's percentage.

Part VIII Assumptions and Dilemmas

As state legislators come to grips with new problems of educational finance they will be influenced by various assumptions, philosophical positions and political realities. Some of these issues have been identified earlier, but deserve further emphasis in this context.

Assumptions

State solutions will of necessity have to take into account the rulings of the courts as well as basic assumptions about the nature of the educational enterprise in America today. Some of these assumptions are:

Education is the responsibility of the states. Constitutionally and historically the responsibility belongs to the state. Local school districts are the creation of the state and may be altered, consolidated, or abolished by the state. The elected state representatives of the people have the ultimate responsibility for the quality and equality of education. It may be delegated to districts, but the state cannot abdicate its obligation to provide equal access to education for all.

Education opportunity has become a "right" of all citizens. The opportunity to obtain a public education appropriate to their needs for a period of at least 12 years has been accepted as a "right" for all American youth. Strong support has been given by educational and political leaders for a minimum of 14 to 16 years of public education for all by expanding preschool and postsecondary educational opportunities.

Educational policymaking should primarily be a legislative process. The determination of educational policy, structure and administrative processes should be exercised by the legislative and administrative bodies of the state rather than by the courts. Public policy as a normal procedure should be developed by elected officials of the people rather than through interpretations of constitutional provisions. If elected and appointed officials do not fulfill their roles in solving problems within the educational system, the courts will be bound to exercise legal responsibilities which result in judicially determined educational policy decisions.

Equal educational opportunity must be available for all. From a moral, as well as legal standpoint, a democratic society cannot permit any child to have less than a full and equal opportunity in the public schools to develop his talents. No child, regardless of race, creed, color or national origin should be denied full access to the benefits of the American social, economic, educational and political system.

Quality education for all is essential to the preservation of democracy and holds out hope for the reduction of poverty, crime and dependence upon public welfare.

States must not be by-passed in federal involvement in education. Although we accept the position that the primary responsibility for education lies with the states, we recognize that educational issues readily cross state lines and that educational deficiencies are not limited by state boundaries. Since the quality of education in one state materially affects all other states, the federal government clearly has a responsibility, as a matter of national policy to strengthen public schools in all the states. It is important, however, to recognize that federal programs in support of education should not by-pass state governments; rather, federal support should go to the appropriate state agencies for allocation in accordance with state plans. Only by preserving the right of the state to direct its financial programs can the state discharge its obligation to provide equal educational opportunity for all of its citizens.

Interstate educational differences must be a federal concern. Studies show wide variations from state to state in educational expenditure levels. The differences stem largely from variations in fiscal ability of the states to raise revenue. Since the states are not able to alter their fiscal ability to any appreciable degree, it appears that the only way to eliminate their fiscal variations insofar as education is concerned is by substantial support from the federal government.

Legal bases of the cases now dealing with Serrano-type decisions cannot be used as precedence for inter-state differences. More consideration must be given to alternative ways to meet such differences from state to state.

Dilemmas

Policy makers find that there are numerous philosophical conflicts related to these educational dilemmas. Some of the most obvious are outlined below.

The dilemma of local vs. centralized control. The question of local control of governmental functions as opposed to a more centralized control has been a basic issue throughout American history. A "federal" system presupposes that certain functions can best be performed at the local, state and national levels. Traditionally, Americans have believed that educational decisions should be made at the lowest level of government where they can be made efficiently. Thus, decisions should not be made at the national level if they can efficiently be made at the state level, and states should not make decisions when they can be made efficiently at the local level. The public school systems have been considered by many as the last vestige of local control. Throughout the nation there is a strong movement for greater community action to emphasize and strengthen local control.

On the other hand there is a commonly accepted principle that control should, or naturally will, be lodged in the agency with funding responsibilities. The conflict arises in the growing tendency for greater state responsibilities for school funding. If full or substantial funding comes from the state, will the philosophy of local control be destroyed, replaced or materially altered?

The dilemma of fiscal egalitarianism vs. individual initiative. The possibility of leveling down as well as leveling up runs into direct conflict with the historic American tradition of rugged individualism and intensive local initiative. The nation has always placed a high value on the aspirations of parents and communities to provide their children with the highest level of education possible. School districts which intent of Serrano. Such programs as school athletics, musical organizations, activity clubs, enrichment field trips and others could be taken over by municipal recreational and cultural agencies of wealthy districts. Thus, the school expenditures would be concentrated on the "core instructional programs." While the educational expenditures would approach equity, the community wealth advantages would be retained. Likewise, the poor districts might seek "non-educational" supplemental funding to provide health care benefits, free meals and other special services for school children. Although these approaches may be totally unrealistic, it must be recognized that such schemes could be developed by redefining the role or responsibility of schools.

The dilemma of increased expenditures vs. increased school achievement. It would be a hollow victory if per pupil expenditures were increased in low-expenditure districts unless there were a corresponding increase in the quality of education and achievements of students. This position was clearly emphasized by the New Jersey Court in Robinson v. Cahill when it said: "while equalizing tax burdens may be readily accomplished. . .it may be more difficult to assure that additional school funds will actually result in improved education." The court stated that the quality of education must be raised where deficiencies exist.

It is entirely possible to spend more money for education without any appreciable improvement in the quality of educational opportunity provided to children. The President's Commission on School Finance noted that: "The American public has assumed almost without question that educational benefits are automatically increased by spending more money...We have been concentrating for too long on the resources going into the schools, giving only minimal attention to the outcomes." The Commission proposed that "State and local educational agencies give increased emphasis to establishing and improving systems of assessing relative costs and benefits of various educational programs and organizational alternatives," and for states to create evaluation systems to measure the effectiveness of educational programs.

In some instances it may be possible to achieve improvement in the quality of education without increasing expenditures. Where this is possible it must be done. It is important for states to develop processes to improve teaching personnel, methods and procedures, to eliminate duplication and inefficient operations and to achieve the greatest value for existing educational expenditures.

In all discussions of educational finance issues, we must never lose sight of the ultimate objective -- the educational achievements of children.

The dilemma of the centralization of expenditures vs. local supervision of school costs. Beyond the issue of control of school policies is the question of moving school expenditures further away from the watchful eyes of local taxpayers. As higher levels of government assume greater responsibility for funding school programs, local citizens have far less opportunity to exercise or influence orderly and systematic control over educational expenditures. The trend could easily be an escalation of expenditures at the state level. Some observers predict that there will be strong tendencies for educational projects, programs and services to multiply rapidly with greater state involvement. Seldom do old programs ever die.

To raise questions about the rapidly increasing cost of educational or other public services does not put one "against" education. Rather it is to recognize that education is caught in the same cost spirals as business, industry, government and individuals. The accelerating cost of all governmental services calls for adequate restraints against the accelerating rates of increase. As school financing is gradually shifted to the state the local taxpayer no longer has the same "watchdog" function over school expenditures and program expansion. Concerned citizen involvement in school funding has been an important factor in building needed support as well as in providing cautious evaluation of the use of public funds. Serious attention must be given to the complicated question of providing appropriate safeguards in the escalating expenditure of and accountability for tax money.

The dilemma of education as a "social need" vs. an individual opportunity. The recent court decisions have decreed that education is a "fundamental interest" of the state. This, in effect, implies that the purpose of the education system is for the well being of the state. In the past this view has not universally been held, although education has been considered a valuable asset to the growth and advancement of society. Education has largely been accepted as an individual opportunity for each child to achieve to the maximum of his ability, and provide for social and economic mobility. There will need to be considerable reaffirmation of this new position and an evaluation of the many implications to the state and to the individual citizens.

CONCLUSION

This discussion does not give "the solution" to the education financial dilemma of the 1970's. Simple and clear-cut answers are not available to the most confounding issue ever to face educational policy-makers. The dilemma is as unsettling and perhaps more universally perplexing than the school desegregation problems which followed *Brown* vs. *Board of Education of Topeka* in 1954.

The issues and positions presented here are intended to foster greater discussion and deliveration. The Education Commission of the States hopes that from these debates will come new plans for all children to achieve the great American dream of equal educational opportunity in every state.

APPENDIX

DISPARITIES IN THE DISTRIBUTION OF EDUCATIONAL RESOURCES

STATE	District Minimum Per Pupil Expenditure	District Maximum Per Pupil Expenditure	Per Pupil Expenditure at the 90th Percentile	Total Expenditure to Raise to the 90th Percentile (Millions)	Assessed Valuation Per Pupil			
					Minimum	Maximum	Average	Ratio--Maximum to Minimum
ALABAMA	$ 294	$ 580	$ 473	$ 40.2	$ 1,961	$ 8,817	$ 4,662	4.5-1
ALASKA	480	1,810	1,254	10.2	18,427	72,629	36,486	3.9-1
ARIZONA	410	2,900	991	88.1	2,984	66,385	14,561	22.2-1
ARKANSAS	294	1,005	512	37.1	3,682	39,338	22,725	10.7-1
CALIFORNIA	402	3,187	918	731.2	8,416	206,804	52,271	24.6-1
COLORADO	444	2,801	853	65.0	1,853	21,192	8,166	11.4-1
CONNECTICUT	499	1,311	1,002	126.8	11,483	62,295	21,281	5.7-1
DELAWARE	633	1,081	1,081	32.3	10,239	56,072	21,349	5.5-1
FLORIDA	582	1,036	824	117.2	6,962	64,568	22,877	9.3-1
GEORGIA	364	735	706	162.6	10,224	47,564	23,588	4.7-1
HAWAII (1 school district)	489	489	--	--	--	--	--	--
IDAHO	483	3,172	904	33.6	3,234	9,544	4,858	3.0-1
ILLINOIS	302	2,295	1,129	401.6	5,034	101,183	19,196	20.1-1
INDIANA	373	961	729	112.9	3,116	54,147	9,338	17.4-1
IOWA	591	1,166	912	85.4	17,596	91,080	36,521	5.2-1
KANSAS	489	1,572	798	69.6	195	35,661	10,364	182.8-1
KENTUCKY	344	885	576	57.1	6,514	56,060	24,253	8.6-1

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Disparities in the Distribution of Educational Resources

STATE	District Minimum Per Pupil Expenditure	District Maximum Per Pupil Expenditure	Per Pupil Expenditure at the 90th Percentile	Total Expenditure to Raise to the 90th Percentile (Millions)	Assessed Valuation Per Pupil			
					Minimum	Maximum	Average	Ratio--Maximum to Minimum
LOUISIANA	$ 499	$ 922	$ 730	$ 53.6	$ 2,089	$ 28,113	$ 5,335	13.5-1
MAINE	215	1,966	660	23.1	4,115	45,909	22,643	11.2-1
MARYLAND	634	1,036	1,037	175.2	11,361	31,249	19,101	2.8-1
MASSACHUSETTS	454	4,243	963	236.0	7,772	80,452	28,189	10.4-1
MICHIGAN	409	1,275	888	326.6	2,085	62,649	14,880	30.0-1
MINNESOTA	373	1,492	777	107.2	10,940	56,599	28,920	5.2-1
MISSISSIPPI	321	825	541	40.6	1,491	7,748	3,936	5.2-1
MISSOURI	213	1,929	808	107.1	1,508	44,706	8,783	29.6-1
MONTANA	467	8,515	1,358	62.5	3,915	9,268	5,117	3.1-1
NEBRASKA	274	3,417	786	48.3	2,664	50,726	26,221	19.0-1
NEVADA	746	1,678	929	8.1	5,141	20,526	13,728	4.0-1
NEW HAMPSHIRE	280	1,356	739	16.9	20,409	91,679	34,022	4.5-1
NEW JERSEY	484	2,876	1,009	285.6	11,387	119,422	363,000	10.5-1
NEW MEXICO	477	1,183	645	25.3	5,898	126,320	35,203	21.4-1
NEW YORK	633	7,241	1,193	537.7	1,320	111,150	25,770	84.2-1
NORTH CAROLINA	467	752	675	84.9	13,026	41,139	23,050	3.2-1
NORTH DAKOTA	327	1,842	776	17.7	2,815	4,724	3,676	1.7-1
OHIO	412	1,684	881	471.8	4,165	44,468	15,892	10.7-1

Disparities in the Distribution of Educational Resources

STATE	District Minimum Per Pupil Expenditure	District Maximum Per Pupil Expenditure	Per Pupil Expenditure at the 90th Percentile	Total Expenditure to Raise to the 90th Percentile (Millions)	Assessed Valuation Per Pupil Minimum	Assessed Valuation Per Pupil Maximum	Assessed Valuation Per Pupil Average	Ratio--Maximum to Minimum
OKLAHOMA	$ 309	$ 2,565	$ 662	$ 55.4	$ 2,050	$ 45,957	$ 22,711	22.4-1
OREGON	431	4,491	914	54.6	17,739	94,668	36,748	5.3-1
PENNSYLVANIA	535	4,230	1,102	456.8	5,716	60,077	17,141	10.5-1
RHODE ISLAND	531	1,206	1,045	45.3	15,270	33,110	21,428	2.2-1
SOUTH CAROLINA	397	610	562	28.2	8,293	72,758	22,936	8.8-1
SOUTH DAKOTA	175	6,012	750	20.1	3,843	37,274	24,802	9.7-1
TENNESSEE	315	774	629	88.9	9,552	90,874	28,303	9.5-1
TEXAS	197	11,096	668	263.4	1,581	71,311	17,213	45.1-1
UTAH	533	1,514	630	13.1	12,863	110,012	29,081	8.6-1
VERMONT	357	1,517	905	21.4	13,891	46,386	25,830	3.3-1
VIRGINIA	441	1,159	776	130.8	10,245	69,537	24,119	6.8-1
WASHINGTON	433	3,993	981	107.2	6,789	84,678	32,394	12.5-1
WEST VIRGINIA	502	721	706	30.8	7,453	27,048	14,517	3.6-1
WISCONSIN	408	1,391	849	89.3	1,481	115,440	29,347	77.9-1
WYOMING	617	14,554	1,146	27.1	4,542	27,774	11,582	6.1-1

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STATEMENT OF CATHARINE BARRETT, PRESIDENT, NATIONAL EDUCATION ASSOCIATION

The National Education Association, representing 1.1 million educators, commends Mr. Carey and Mr. Mills for their concern over the financial plight of elementary and secondary schools. However, we do not believe that Title I of HR 16141 as introduced is adequate in design, scope, or amount to solve the current problems of public education, and we do not believe that Title II is sound public policy.

Title I of HR 16141 proposes payments of $2.25 billion annually to the states for public elementary and secondary education, beginning with the current fiscal year and continuing thereafter at the same amount each year. It establishes a Public Education Trust Fund to receive funds derived from federal individual income taxes.

Let me say that we support the creation of a Public Education Trust Fund as contemplated by this bill. As you are all aware, over the years one of the major deficiencies of federal education programs has been the lack of adequate lead time for planning and staffing federal programs. As a result, school districts have been forced to hurry up and spend late-arriving aid money before it is lost at the end of the fiscal year. This has sometimes led to unwise expenditure. The trust fund concept should considerably improve the effectiveness of federal aid programs by alleviating this built-in problem.

The President's Commission on School Finance has estimated the cost of achieving intrastate equalization of school district expenditures. It would cost $1.3 billion to bring all districts up to the state-wide average and $6.3 billion to bring all districts up to the 90th percentile.[1] Because these estimates are based on 1969 figures they are probably low today.

The fiscal dilemma facing the states is that additional state revenues to bring all districts up to the level of funding of the highest districts are simply not available. The alternative of lowering the level of finance in the high districts to the state-wide average is as unpalatable as raising taxes.

Many states would have great difficulty qualifying by meeting either of the two tests of qualified equalizing programs in Sec. 102 of Title I. Currently only one state, Hawaii, supplies in excess of 90% of school funding, and thus would qualify under the first eligibility criterion.

The second test of equalization would screen out most states under their existing state distribution formula. States which are making a substantial effort to support city school systems could be penalized, since with few exceptions, cities have higher per pupil expenditure that the state-wide average and are high in assessed value as well. In addition, many states do not have property assessment equalization programs and the assessment ratios to market value of property vary widely.

The bill omits definitions of school expenditure and of assessed value. School expenditures may include current expenditures for the regular day school programs, expenditures for the other school programs, i.e., summer schools, adult education, etc., capital outlay, and interest. Assessed value can include or exclude the tax exempt portion of the tax roll, particularly on homestead exemptions. The variation among state laws in this respect is great.

The alternative, turning over to the Secretary of HEW a tremendous amount of discretionary authority to establish eligibility, could, if used unwisely, affect the relative share of the states in this $2.25 billion appropriation.

The plan in no way equalizes funds among the states. It could be, in fact, disequalizing because, for example, 10% of New York's nonfederal expenditures per pupil are three times those of either Arkansas or Mississippi and the limit of 10% for New York would exceed $500 million compared to about $25 million apiece for Arkansas and Mississippi.

We object strongly to the language in Sec. 105a which provides: "that persons employed in jobs financed in whole or in part out of its trust fund established under paragraph (1) will be paid wages which will not be lower than the prevailing rates of pay for persons employed in similar jobs by such State." This is not an appropriate control for a federal bill. It would affect mainly classroom teachers, but would also affect all school employees whose salaries are now negotiated with the school districts. In the vast majority of states, school employees are employees of the local district and thus the prevailing wage level should be that of the district.

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[1] President's Commission on School Finance Review of Existing State Finance Programs. VII p. 16.

We urge the Committee on Ways and Means, if it considers a general education aid bill to be within its province rather than that of the Committee on Education and Labor, to give full consideration to alternative plans to equalize educational opportunities among the public school children within and among states, to plan now for an adequate system of federal support which will provide for ⅓ federal funding of the costs of elementary and secondary public schools.

Furthermore, since the current crisis in school finance is most acute in the center city school systems, we recommend that any federal aid program which deals with equalizing within states establish a priority for funding the needs on city school systems.

Title II of H.R. 16141 proposes a tax credit of up to $200 for tuition paid for any taxpayer's dependent if such dependent is attending a private non-profit elementary or secondary school.

The National Education Association opposes this provision on philosophical as well as practical grounds.

We contend that it is bad public policy to attempt to do by subterfuge or indirection that which is clearly unconstitutional if attempted directly. This proposal is primarily designed to assist church related schools which are faced as are the public schools, with a fiscal crisis. By their own admission, the nonpublic schools will increase tuition to the maximum amount provided for in the tax credit. Thus, the federal tax system will merely serve as a conduit for public funds to religious education.

All taxpayers not availing themselves of the tax credit benefit, that is, all taxpayers with no schoolage children or those who send their children to public schools, will be taxed to make up the difference of the loss to the Treasury, or will suffer from reduced federal services in other areas such as health, education, etc.

The argument is raised that parents who send their children to private or parochial schools are taxed double. This is specious. The decision of parents to send children to other than the public schools in no way lessens their responsibility to support public schools. The public schools benefit all citizens, not just parents. Childless couples or single persons are not excused from paying school taxes, nor should they be any more than should the Christian Scientist be excused from paying taxes to support medical programs or the pacifist to support the military activities of the nation.

It is contended by some that the public schools cannot expand to accommodate the 5 million children enrolled in private schools. In many communities this accommodation has already taken place. It is interesting to note that in the 1970–71 school year, 16 states enrolled over 95% of their children in public schools; 41 states enrolled 85% of the children in public schools, and no state has less than 80% in the public schools. Recent news stories point out that, since these data were compiled, there has been a more than 300,000 drop in enrollment in parochial schools, which would make the above percentages on public school enrollment even higher. It is also worth noting that, because of declining birth rates, the number of schoolage children (5–17) for the coming school year will drop about 500,000, obviously creating room for pupils to transfer from private schools. Where parochial schools have closed, the facilities have frequently been leased or sold to the public school system in the community, thus making a building program for this purpose unnecessary. We are convinced that the public schools, if provided with the kind and amount of federal funding to which they are entitled, can effectively accommodate all American children and provide quality education to them all.

As the bill is written, the tax credit proposal is of no assistance to the low income family which pays no taxes. The number of children from such families attending the parochial schools will be far less than their proportionate membership in the church. Indeed, at present less than three percent of the nonpublic school children are from poverty level families. We believe that the establishment of perpetuation of schools which cater only to middle and upper income families are contrary to the objective of economic integration. We believe such a system can lead to the further development of a class system based not only on adherence to a particular religion, but also on the economic status of the family. The public schools will become the papuer schools—a haven for the unwanted and unwashed, if you will—a development not in the nation's interest.

It is contended that Title II of this bill would cost the treasury $584 million. We question this figure. The 1970 census indicates that 5,378,000 pupils are enrolled in private schools. For the sake of discussion it is assumed that some are in private profit-making schools—probably not more than 60,000. Thus, 5,318,000 children times the $200 provided in the bill would total $1,063,600,000, or almost twice the figure estimated.

It is possible that additional private schools will develop with additional drain on the Treasury in years ahead. Like most wage earners subject to withholding tax, the teachers of America are disturbed by the drain on the Treasury from the many so-called loopholes in the present tax structure. We will strongly object to any additional raids on the Treasury by the tax credit route.

While Title I of HR 16141 contains language prohibiting public schools aided by the act from excluding pupils on the basis of race, color, national origin, or sex, no such specific prohibition applies to private schools aided by Title II. Reference is made in Title II to sections of the Tax Code which apply to deductions for charitable purposes and under which IRS has ruled that white academies established to avoid integration are not eligible. However, schools which segregate on the basis of sex or religion can still be aided by Title II. Thus, we find here a proposal that federal dollars be used to permit circumvention of the Civil Rights Act of 1964 which prohibits discrimination, not only on the basis of race but also on the bases of religion, sex, and national origin.

It should be noted that in some instances tuition is paid for attendance of children in public schools. This is common practice where children attend public schools in neighboring states or counties. Yet, this proposal permits tax credits only for attendance at non-public schools, which is clearly class legislation. However, if public school tuition is included for the tax benefit, it is conceivable that state laws will be amended to charge tuition to attend public schools, thus possibly leading to a drain on the Treasury, without any equalization factor for school aid, of an additional $9.6 billion at the rate of $200 per child.

There are other factors that should also be considered:

What happens if the tuition is paid to the private school and the child then transfers to the public school? Is IRS to become a school attendance agency?

Suppose, as is likely if the tax remission feature is included for low-income families, that the tuition is paid from welfare funds. Is the parent to receive a tax credit remission for federal funds transferred to a private school?

Suppose IRS finds during the year that the non-public school is operating primarily to furnish an alternative to integrated public schools. Is the parent the victim of IRS action, or does IRS proceed against the school which received the tuition payment to recover the $200? Or does the low-income parent have to bear the court cost which will clearly be involved?

We share the concern of those who question the constitutionality of the tax credit proposal contained in HR 16141 and similar bills before the Committee. But regardless of the outcome of a constitutional test, we believe that this legislation is inimical to the concept of a pluralistic society which is a large factor in the nation's strength. Isolation of children during their formative years into sectarian segments of society is inherently divisive and can be the basis for encouraging an expansion of the bigotry which is a blot on the fair name of our country. New religions are being formed constantly. Under the first amendment no law may prohibit the establishment of a religion. What is to prevent a group of people from organizing a religion which has as one of its tenets that racial integration is contrary to divine law, and then starting a school or schools based on this principle—and receiving federal tax credits to support such a program, on the basis of free exercise of their religious freedom and parental rights?

We urge the Committee to reject HR 16141 and to give their expert attention to tax reform which will lessen rather than increase the number of tax loopholes which are disturbing the American people.

American Association of Retired Persons,
National Retired Teachers Association,
Washington, D.C., September 15, 1972.

Hon. Wilbur D. Mills,
Chairman, House Ways and Means Committee,
Longworth House Office Building,
Washington, D.C.

Dear Mr. Chairman: Our organizations, the National Retired Teachers Association and the American Association of Retired Persons, with a combined membership of over four million, three-hundred thousand older Americans, generally support increased federal aid to public education in order to alleviate, at least in part, the financial crisis confronting American education and the property tax crisis confronting older persons. We therefore approve the stated purpose of Title I of H.R. 16141, the Public and Private Education Assistance Act of 1972.

We cannot, however, approve the formula used to determine the amount of the federal contribution to states where a significant portion of public school financing is raised locally, since it is linked to assessed property valuation and average property tax rates. Moreover, we feel the bill does not adequately address the priority of property tax relief.

Certainly, a substantial increase in federal aid to public education is both appropriate and necessary. The comparative revenue-raising abilities of local and federal governments are inversely proportional to their expenditures for elementary and secondary education. While the localities contribute 53 per cent of the cost of education, the federal government contributes a mere 7 per cent. However, the federal government collects 64 per cent of this country's total revenue; the localities collect only 17 per cent.

Decisions by the courts and by the voters foreshadow the demise of the property tax system as the primary mechanism for funding increasing educational costs. Twentieth century education cannot rely for adequate financing on a nineteenth century revenue-raising system which distributes its tax burden with callous disregard for the tax-paying ability of the individual homeowner.

It is the belief of our Associations that the federal government must begin immediately to ease the property tax burden on the older homeowners. While his income is relatively fixed, there is nothing fixed about the property tax, which has registered at 40 percent increase since 1963. There is obviously little fairness and no flexibility in a tax system which requires either the payment of a tax bill, determined without regard to the homeowner's ability to pay, or the sale of the property to someone who can.

In response to the property tax crisis, our Associations favor, at the federal level, a combination of remedies to: (1) provide state and local governments with alternative sources of revenue, raised through a progressive federal income tax; (2) induce property tax reform and relief for the benefit of elderly and other low income groups; (3) induce state and local governments to abandon, to the extent possible, the archaic and oppressive property tax mechanism in favor of a progressive income tax; and (4) diminish the revenue needs of state and local governments. We therefore favor revenue-sharing legislation and financial incentive legislation designed to induce reform at the lower governmental levels. We are not unfavorably disposed to direct taxpayer relief through federal income tax credit legislation. However, we recognize that, since less than 50 percent of the elderly have any federal income tax liability against which a credit for property taxes paid to states and localities could be taken, such a credit would not benefit those older persons most in need.

Finally, our Associations favor the assumption, by the federal government, of a significant portion of the cost of public education and other burdensome cost items of state and local government.

While our Associations approve the purpose of H.R. 16141 to increase, indirectly, federal aid to public education by making federal matching contributions available to the states, some other mechanism for determining state eligibility for, and the amount of, the federal contribution and its state-wide distribution, should be used. Furthermore, we object to the bill's failure to use the availability of the federal contribution to induce property tax reform or relief.

NRTA and AARP hope that the members of the House Committee on Ways and Means will be mindful of the property tax problems of older persons as they consider the merits of Title I of H.R. 16141 and other proposals for increasing federal participation in financing the cost of public education.

Sincerely,

CYRIL F. BRICKFIELD,
Legislative Counsel.

STATEMENT OF BERNARD L. WEINSTEIN, WASHINGTON, D.C.

(Mr. Weinstein is an economic consultant who was formerly Staff Economist with the President's Commission on School Finance. He is the author of several articles on tax credits and the economic problems of nonpublic schools.)

I should like to address myself to two key issues in the current debate about the causes and consequences of declining enrollments in the nation's nonpublic schools.

The Center for Field Research and School Services at Boston College, one of America's leading Catholic universities, recently completed a 2-year study on the crisis in nonpublic education for the President's Commission on School Finance. The researchers could find no evidence that parents are leaving nonpublic schools, and particularly Catholic schools, because of increasing costs. In the summary volume of their 2,500 page report, the authors of the study state that ". . . one must be naive, uninformed, or dishonest to depict the current enrollment decline as fundamentally a consequence of cost increases." According to the study, the major causes of the enrollment declines in Catholic schools are:

1. A major outmigration of Catholics from the central cities to the suburbs where the public schools are in high repute and parochial schools are not as widely available.
2. Changing attitudes among Catholics regarding the perceived benefits of public vs. parochial education.
3. The recent decline in the birth rate which has accentuated enrollment losses and made them seem more serious than they really are.
4. Fragmented and inefficient mechanisms within the Church for raising revenues for the support of the parochial school system.

One of the myths being fostered by some proponents of aid to nonpublic schools is that private school closings will impose substantial fiscal burdens on the public school systems due to the resultant increases in public school enrollments. A careful analysis of enrollment projections, however, will not substantiate this claim. Even if nonpublic school enrollments should decline by 50 percent between 1970 and 1980, total public school enrollment in 1980 will be lower than it was in 1970. The leveling-off of school enrollments between now and 1980 simply reflects the declining birthrate that has prevailed in this country since the mid 1960's.

Statement of Rabbi Bernard Goldenberg, Director, School Organization and Professional Services, Torah Umesorah, National Society for Hebrew Day Schools

I have the honor to represent the National Society for Hebrew Day Schools—Torah Umesorah. Our appreciation is hereby extended for this opportunity to present the position of the American Hebrew Day School movement on the educational needs of the Seventies. The movement comprises some 400 elementary and secondary schools throughout the states which offer programs of instruction in both the secular and religious areas of study.

Founded in 1944, in order to foster the growth of Hebrew Day Schools in America, we number at present, as mentioned, some 400 Hebrew Day Schools in the United States, of which 270 are elementary while 130 are secondary schools. These schools are located in 150 cities in 32 states from coast to coast. The aggregate student enrollment of these schools is 82,000.

In addition to being directly involved in founding new Hebrew Day Schools, we also service all of the schools in the movement through the provision of administrative and teaching personnel, supervisory services, curricular programs, textbook materials, loans and grants, educational aids and literature. We sponsor five (5) Teacher Training Institutes in New York, Baltimore, Chicago and Cleveland respectfully, as well as a National Association of Hebrew Day School Principals and a National Association of Hebrew Day School P.T.A.'s. Our national body is acknowledged to be the representative agency of the Hebrew Day School movement in America.

Our type of nonpublic school has the objective of providing intensive instruction in both the area of secular, general education and that of Jewish religious education, and it seeks to accomplish both on highly exacting levels. It strives to inculcate in its pupils a rich knowledge and fervent love of their American heritage and homeland, a firm sense of civic responsibility and an enduring commitment to the pursuit of academic excellence in the sciences and the humanities, side by side with a high regard for ethical norms and abiding loyalty to the principles and precepts of the Jewish religious tradition. In essence, the Hebrew Day School is committed to the building of a synthesis between the values of Judaism and the best of American culture.

With reference to the achievements of the Day Schools, the scholastic standards maintained by these schools throughout the country and the subsequent record of academic achievement of their graduates has been exemplary, and has won the enthusiastic approval of many public school educators as well. Amongst the graduates of Hebrew Day Schools, there are an impressive number of personalities who have won national and international renown in the professions, in academic and scientific endeavor, in the judiciary and in government service.

With reference to the General Studies Departments of the Day Schools, it should be noted that their curriculum is patterned after the course of study of the public schools, with cooperation frequently extended by local superintendents of schools. The teaching personnel in the General Studies Departments are often themselves public school teachers, and are of widely varying religious backgrounds.

It should be noted also, that while almost the entire movement is united in basic principle, the Hebrew Day Schools are most properly classified as private schools, since they are individually autonomous in operation. They are likewise maintained financially in part by payment of prescribed tuition fees, on the part of the parents of the pupils, and in part by voluntary contributions made by sympathetic individuals and groups. On the average, approximately 40% of the budgets are covered by tuition. The tuition rates are approximately $350–$600 per year, but in the large metropolitan communities, where the majority of these schools are found, a large percentage of the parents have very limited economic earnings, which makes them dependent on tuition grants should they wish to enroll their children in a Hebrew Day School. Since Day School parents consider both Day School religious instruction and the finest possible program of secular instruction as equally vital for their children, the economically underprivileged among them are faced by the agonizing choice of either failing to provide adequately for the religious education for their children, or of being driven into desperate financial straits when they seek to send their children to Hebrew Day Schools—whose standards are themselves jeopardized by unability to meet the constantly rising budgetary requirements imposed by the needs of our time.

As we all know, the Seventies is not just around the corner—it is already here. And the hour glass, ticking away relentlessly is introducing us rather quickly to the crowded and dramatic agenda of the Seventies.

One of the pressing items of the Seventies is that of students attending nonpublic schools.

Perhaps by concentrating our attention on a single area we can gain a better insight into the plight of the poor parents in the larger metropolitan areas who have chosen a nonpublic school for the public education of their children. In New York City 50% of the Jewish children attend Hebrew Day Schools. Nearly 120 of the 181 schools in this major city are located in poverty areas and about 35,000 pupils attend such schools in poor and lower middle class areas. With an educational institution such as the Hebrew Day School being the pivotal institution in the structure of the Jewish community—should it happen that Hebrew Day Schools in such areas will no longer be able to provide scholarships for the children of the poor and the lower middle class—the whole community will then be threatened. For at such a point parents of Hebrew Day School students, finding no available viable educational institution in their community, will then have to relocate to another area for the sake of their children's education. In the wake of this you have an accelerated flight from the city, a further emptying of the inner city, and urban relocation with all its attendant evils. And all because of a lack of freedom of choice in education. Thus years of investment of resources, will, perserverance and purpose will be crushed in record time because of the relocation of parents since the school is the pivot institution of the community. Such a decision deeply immersed in agony nullifies years of consecrated efforts and purposeful living. And what was once a colorful, polyglot neighborhood with its ethnic nuances and integration becomes that no more. And all for want of understanding of the plight of the poor parent who opts for nonpublic school education.

As parents, as Jews and as educators, deeply devoted to both education and educational excellence—we feel that a rethinking on this problem of Federal aid to education is long overdue. Ours is an age when the pursuit of education is vested with an unparalleled urgency. Can we in this urgency deny millions of children attending nonpublic schools responsible educational opportunities? Is the social good of our society served by an approach which looks the other way while these millions of children are then imperatively urged by our own society and its built-in tensions to pursue educational excellence?

Let us note with a full measure of certainty, we ask not for support of religious aims and purposes—for we are staunch believers in the principle of Church-State separation. We do, however, feel that Governmental concern should allow millions of citizens-in-the-making to share in a reasonable manner in the educational efforts of our great country. *It is not the creed of the child which should be the focus of our concern but rather the need of the child.*

Let me also discuss another basic facet of democracy which will need sharpening in the crowded agenda of the Seventies. Pluralism in education is the right to choose between educational alternatives without penalty. But if we are to have a pluralistic educational system, with all the good it implies, then such a system needs the financial encouragement of the state.

No less a group than the U.S. Chamber of Commerce favored this approach when in its 1966 Task Force Report it recommended "the Federal government should consider legislation which would enable communities to adopt programs establishing a public-private option for all children".

A financial penalty attached to the exercise of one's conscience is an infringement of free exercise, while the creative sense of shared purpose is the very greatness of a free people. There is no freedom of choice in education if parents have to pay substantial costs for educating their children, while free schools beckon them.

We, therefore, want to go on record as enthusiastically supporting legislation allowing tax credits for nonpublic school parents.

If we are to have pluralism in education. If we are to have the right to choose between educational alternatives without penalty then some way must be found to make such a choice viable and real.

Tax credits is one such way. Furthermore, such an approach does not come apart on the shoals of constitutional dilemmas. The problem of excessive entanglement of State and Church is also not present in the tax credit concept as there would also not be any need for increased government supervision and involvement.

Surely the tax credit legislation now being considered meets all constitutional strictures and is in accordance with the guidelines laid down by the Supreme Court in its recent rulings on aid to nonpublic schools.

We, therefore, want to go on record favoring such legislation and urge the committee to move it along as soon as possible.

It would seem that the decades ahead are geared to the concept of educational alternatives. Such alternatives should be keyed to the preservation of the nation—but, likewise the nation should be keyed to the preservation of the educational alternatives. One without the other is barren rhetoric. And barren rhetoric neither builds nor preserves. We look to Congress and to the Government of the U.S. to build the new and preserve the old so as to be fruitful rather than barren, creative rather than rhetorical.

Thank you very much.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., August 21, 1972.

Hon. WILBUR B. MILLS,
Chairman, Committee on Ways and Means, House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: The attached letter from Sister Anne Finnerty, Superintendent of the Catholic School Department of Brownsville, Texas, is submitted for your information and for any consideration the committee members may afford it in connection with hearings on the subject.

Provided it is commensurate with the committee's policies I would greatly appreciate having Sister Anne's letter made an official part of the committee hearings.

With my thanks and kindest regards, I am
Sincerely,

E. (KIKA) DE LA GARZA,
Member of Congress.

Attachment.

DIOCESE OF BROWNSVILLE,
CATHOLIC SCHOOL DEPARTMENT,
Brownsville, Tex., August 16, 1972.

HON. E. (KIKA) DE LA GARZA,
House of Representatives,
Washington, D.C.

DEAR SIR: As Superintendent of the Catholic Schools in the Rio Grande Valley I have had the unhappy duty to preside over the closing of two of our schools in May of this year. In the three years, 1968 to 1971, I was closely associated with the Catholic Schools here and saw six others close. There are only ten left and the future does not look very bright for some of these. But, there is some hope that they will survive. Some of that hope centers around the tax credit legislation currently in the Ways and Means Committee in Congress.

I am writing to urge you to support this legislation and to inform The Honorable Wilbur Mills of your position. I write on behalf of all of the people who depend on our schools here in the valley. I also know that there are many citizens who although they do not patronize non-public schools, still do not want to see them go out of existence. Such a calamity would lay an immense financial burden on all taxpayers, but even more, it would mean the end to meaningful freedom of education for those parents and children of the Valley who seek some alternative to a single unitary public school system.

Your support of this legislation will be applauded by all who are concerned with the future of non-public education.

Respectfully yours,

SISTER ANNE FINNERTY,
Superintendent, Diocese of Brownsville.

BOARD OF CHRISTIAN SOCIAL CONCERNS
OF THE UNITED METHODIST CHURCH,
Washington, D.C., August 29, 1972.

HON. WILBUR D. MILLS,
Chairman, Ways and Means Committee,
House of Representatives, Washington, D.C.

DEAR MR. MILLS: On behalf of our Board I am writing you to express concern over provisions of H.R. 16141, legislation now pending before your Committee. We have no quarrels fundamentally with the bill's major thrust—an attempt, through matching federal funds, to readjust the inequitable distribution of public education monies incurred as a result of disparate property tax income within various school districts.

However, our concern is related to Title II of the measure which provides for tax credits for private school tuition. This section seems to stand in contradiction to Constitutional provisions against establishment of religion as well as to run counter to Supreme Court decisions in June of 1971 regarding federal entanglement in administrative procedures of private religious schools.

The position of The United Methodist Church on "Church-Government Relations" as declared by our General Conference of 1968 stated: "We do not support the expansion or the strengthening of private schools with public funds." (context enclosed) In addition, our own Board of Christian Social Concerns approved a policy statement in October of 1971 with respect to Educational Voucher Plans. It said:

"The Board of Christian Social Concerns opposes the voucher plan or a tax checkoff plan because: (1) it could encourage an administratively inefficient educational system; (2) it threatens to entrench poor children in segregated and inadequately supported ghetto schools; (3) it endangers the Constitutional principle of separation of church and state; and (4) it could act as a divisive force in the community."

Although a tax credit may be rightly differentiated from a voucher plan in terms of means, the next result of a rather direct subsidy of parochial schools is apparent. Furthermore, I should think substantial entanglement would be involved when it became necessary for the federal government to scrutinize the financial records of parochial schools in order to ascertain that tax credits were not being fraudulently obtained.

In no way do we mean to imply that private and parochial schools should not exist or be given strong financial support. Our objection is to using public funds for such purposes.

It will be greatly appreciated if you will include this letter in the written record of public testimony.

Yours sincerely,

J. ELLIOTT CORBETT,
Director, Department of Church/Government Relations.

Enclosure.

CONTEXT OF QUOTE

"We believe in the principle of universal public education and we reaffirm our support of public educational institutions. At the same time, we recognize and pledge our continued allegiance to the U.S. constitutional principle that citizens have a right to establish and maintain private schools from private resources so long as such schools meet public standards of quality. Such schools have made a genuine contribution to society. We do not support the expansion or the strengthening of private schools with public funds. Furthermore, we oppose the establishment or strengthening of private schools that jeopardize the public school system or thwart valid public policy."

"The United Methodist Church and Church-Government Relations in the United States of America," Chapter Three, page 8, Adopted by the General Conference of The United Methodist Church, May 1968.

STATEMENT OF THE UNION OF ORTHODOX JEWISH CONGREGATIONS OF AMERICA REGARDING TAX CREDITS FOR PAROCHIAL SCHOOL TUITION

The Jewish day school is a unique American institution. In other lands and in other times Jewish schools taught only religious studies. The concept of a Jewish school spending half of its day on religious studies and the other half on secular studies, which is the way most day schools are structured, is the answer of the American Jewish community to the requirements of government and the demands of modern society concerning secular education.

As of June 1971 there were 417 Jewish day schools in the United States, 291 on the elementary level and 126 on the high school level, with a total enrollment of 80,000 pupils. In the New York Metropolitan Area alone, one out of every three children receiving any type of Jewish education was enrolled in a Jewish day school.

The public school system of today is not the same system that opened the door of opportunity to successive waves of immigrants. The parochial schools of today, with their increasing number of lay teachers and the liberalization of church attitudes toward other religious groups, are not the same as those of the past, which may have caused apprehension in the Jewish and general community.

The myths of the past—that a public school child grows up to be more tolerant of and more at ease with people of different backgrounds and hence better equipped to take his place in a pluralistic American society; or that a public school education makes a person more liberal, whereas parochial school education make one more conservative—today stand discredited among social scientists who have studied the subject. On the contrary, a child grows into a more secure and tolerant adult when he is permitted to "find himself" in a school that is free from the intergroup tensions that are the hallmark of the public schools in our large cities. If monopoly is unhealthy in other areas of our society, then it is no different in education. In any age of soaring costs, unless private education receives government aid, it cannot survive except for the very rich. If the concept of cultural pluralism is to have any meaning at all, educational facilities must exist for the ethnic and religious groups in American society to transmit their cultures to future generations.

Contrary to the assertions of the majority, there is no question that parochial schools, by educating some six million pupils constituting about thirteen per cent of all school-age children, save our federal and state governments billions of dollars. It is obvious that it is cheaper for government to give parochial schools limited funds to stave off their closing than to find places for their pupils in the already overcrowded public school system.

In attempting to defend an outmoded concept of church-state separation, many advocate positions that may win points of logical structure and doctrinal consistency but whose effect is to promote human suffering. Thus, they would permit free lunches and medical and dental services to be given to parochial school children on school premises, they would not permit speech therapy to be given at public expense except off the parochial school grounds. The fact that this burdensome requirement would undoubtedly reduce the number of candidates for speech therapy does not sway the majority. Better to have a few more stammerers than to compromise one's principles.

Or take the child who lives in the inner-city, where the public school system has already broken down. His parent's poverty and, perhaps, race prevent them from moving to an area where the public school system is still healthy. Nor can they afford to send their child to a private school. What hope does the majority offer to such a child other than the dismal prospect of attending a school where his physical and moral health is in jeopardy and where little learning takes place? Concepts such as the education voucher plan or tax credits are advocated not only by those who desire to save religion-sponsored schools, but also by those who want to provide opportunity to the inner-city child. Such plans would also give inner-city parents the dignity that comes with the ability to pay for educational services, and thus to choose an alternative to an unacceptable public school system, even if the alternative may be only a privately-run storefront academy.

We find it highly significant that the recent White House Conference on Youth came out in favor of the educational voucher plan.

To the extent that methods, such as tuition grants, education vouchers or tax credits, may be found within the recent Supreme Court rulings to permit government aid for secular education in religion-sponsored schools, we should welcome them.

National Council of the Churches
Of Christ in the U.S.A.,
Washington, D.C., September 8, 1972.

Hon. Wilbur Mills,
Chairman, Ways and Means Committee,
U.S. House of Representatives, Washington, D.C.

Dear Mr. Chairman: In view of the current Hearings by the Committee on Ways and Means on proposals which would provide aid to primary and secondary education in the form of tax credits and/or deductions, we want to share with you our position on the subject and request that this letter and the attached material be included in the Record of the Hearings.

The enclosed policy statement "Public Funds for Public Schools" was adopted by the General Board of the National Council of Churches, a federation of 32 Protestant and Orthodox denominations. As you will note, the Statement expresses specific opposition to " 'tax-credits', 'tax-forgiveness', and exemption from school taxes or other taxes for parents whose children attend non-public elementary or secondary schools."

Also enclosed is a subsequent interpretation statement through which the General Board sought to clarify its earlier statement by noting among other things that its position regarding "tax credits" was not intended to imply either opposition to, or support for, proposals to make parochial school tuition *deductible* from federal or state income tax as a religious contribution.

We appreciate this opportunity to share our views on this subject with you and the Committee.

With best wishes, I am,

Sincerely yours,

James A. Hamilton, *Director.*

Attachments.

A Pronouncement—A Policy Statement of the National Council of the Churches of Christ in the United States of America

PUBLIC FUNDS FOR PUBLIC SCHOOLS—ADOPTED BY THE GENERAL BOARD, FEBRUARY 22, 1961

The churches comprising the National Council of Churches hold in common with many other American organizations, religious and secular, certain convictions and concerns about the role of public education in a free society. All citizens share responsibility for the general education of all children in our society. The public school, supported by the taxes of all citizens, is the main and indispensable agency for this purpose. Non-public schools, however valuable to their patrons and to society, cannot fulfill the responsibility of the whole society for educating all children.

As a nation it is our duty to encourage the full development of the talents and abilities of all of our citizens. The provision of general education for all requires the mobilization of the best resources of our society to support the public school system, which in many areas is already inadequate to cope with the rate of our population growth and the rapid increase of knowledge.

New public school buildings must be planned and built. More teachers must be recruited and trained. Better methods of education must be perfected and applied. This is a mammoth and long-term effort. Where there is inability or unwillingness in any community to provide adequate educational opportunities for all children, such failure must be remedied by society as a whole.

Sharing these concerns with a wide range of our fellow citizens, the members of the churches which comprise the National Council of Churches have in addition convictions which rise more directly out of their faith in Jesus Christ. That the Kingdom of Christ transcends all nations, that no government of men is independent of God, that the survival of our society depends ultimately upon the Providence of God, that no man should be prevented from responding in faith and obedience to God as He is revealed in Jesus Christ; these are some of the specifically Christian convictions that bear upon our attitude toward questions of educational policy in the United States.

Thus, while supporting as Americans the public system of elementary and secondary schools with a host of our fellow citizens, as Christians we stand for the right of all parents, all citizens, and all churches to establish and maintain non-public schools whose ethos and curriculum differ from that of the community as a whole. (The Constitution of the United States as presently interpreted guarantees this right.)

In principle Protestant and Orthodox Churches claim the right for themselves to establish and maintain schools in any community where the ethos of the public school system is or becomes basically inimical to the Christian education of our children. But we believe that to encourage such a general development would be tragic in its results to the American people.

The elementary and secondary schools of general education related to or operated by constituent communions of the National Council of the Churches of Christ in the U.S.A. value their freedom and independence to witness to the Lord of the Church, and to nurture their pupils in the Christian faith. We do not, however, ask for public funds for elementary or secondary education under Church control. If private schools were to be supported in the United States by tax funds, the practical effect would be that the American people would lose their actual control of the use of the taxes paid by all the people for purposes common to the whole society. We therefore do not consider it just or lawful that public funds should be assigned to support the elementary or secondary schools of any Church. The assignment of such funds could easily lead additional religious or other groups to undertake full scale parochial or private education with reliance on public tax support. This further fragmentation of general education in the United States would destroy the public school system or at least weaken it so gravely that it could not possibly adequately meet the educational needs of all the children of our growing society.

We reaffirm our support of the public school system as an indispensable means of providing educational opportunity for all children; we urge provision of increased resources for the operation and improvement of the public schools; we declare our whole-hearted support of the principle of public control of public funds.

Therefore,

1. We favor the provision of federal funds for tax-supported elementary and secondary public schools under the following conditions: (a) that the funds be administered by the states with provision for report by them to the U.S. Commissioner of Education on the use of the funds; (b) that there be no discrimination among children on the basis of race, religion, class, or national origin; (c) that there be adequate safeguards against federal control of educational policy.

2. We oppose grants from federal, state, or local tax funds for non-public elementary and secondary schools.

3. We oppose the payment from public funds for tuition or "scholarships" for children to attend private or church-related elementary or secondary schools, or grants to their parents for that purpose.

4. We are opposed to "tax-credits," "tax-forgiveness," and exemption from school taxes or other taxes for parents whose children attend non-public elementary or secondary schools.

5. We favor the supplying of dental or medical services, lunches, and other distinctly welfare services to all children, whatever school they may be attending, provided such services are identifiable by recipients as public services, and the expenditures are administered by public authorities responsible to the electorate.

We are concerned to promote and safeguard the principles already expressed, and to avoid the infringement of religious liberty which arises when taxes paid under compulsion by all the people are used to aid non-public schools.

87 For, 1 against, 0 abstentions.

NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE U.S.A.—INTERPRETATION PUBLIC FUNDS FOR PUBLIC SCHOOLS, APPROVED BY THE GENERAL BOARD, JUNE 8–9, 1961

INFORMATION

On February 22, 1961 the General Board of the National Council of Churches adopted a pronouncement entitled "Public Funds for Public Schools." Questions which have been raised regarding the meaning of this pronouncement indicate that the General Board should approve an interpretive statement which would be incorporated in the minutes of the Board. Therefore it was

Voted to approve the following statement: The General Board of the National Council of the Churches of Christ in the United States of America wishes to provide the following interpretation of the Pronouncement PUBLIC FUNDS FOR PUBLIC SCHOOLS adopted February 22, 1961, in order to clarify some of the implications of that Pronouncement.

1. The statement "We are concerned . . . to avoid the infringement of religious liberty which arises when taxes are paid under compulsion by all the people are used to aid non-public schools" should be understood to include opposition to loans for the construction of non-public elementary and secondary schools or classrooms therein.

2. The statement "We oppose grants from federal, state or local tax funds for non-public elementary and secondary schools" should be understood to include special-purpose grants as well as general or across-the-board grants.

3. The statement "We are opposed to 'tax credits', 'tax forgiveness', and exemption from school taxes or other taxes for parents whose children attend non-public elementary and secondary schools" is not intended to imply either opposition to, or support for, proposals to make parochial school tuition deductible as a religious contribution from federal or state income tax.

WISCONSIN EVANGELICAL LUTHERAN SYNOD,
Milwaukee, Wis., August 14, 1972.

COMMITTEE ON WAYS AND MEANS,
Longworth House Office Building,
Washington, D.C.

GENTLEMEN: This letter with its pertinent information is offered to your committee for consideration when studying tax credit bills such as those introduced by the honorable Wilbur Mills, Hugh Carey, and John Byrnes. This is written in opposition to the tax credit laws.

The Wisconsin Evangelical Lutheran Synod, of which I am executive secretary of the Board for Parish Education, has 266 elementary and secondary parochial schools with a total enrollment of 30,000 students. These schools are located in 15 states.

Many churches of the Wisconsin Lutheran Synod have established and maintained parochial schools since the early history of our Synod. This was and is being done in order to give our children a Bible-centered education and training in which all subjects and teaching are permeated with the truths of God's Word.

The Wisconsin Lutheran Synod does not seek government aid in order to carry out its educational programs in its parochial schools. Our elementary schools are supported and maintained by free-will offerings of the members of our churches; our high schools are supported by free-will offerings and by tuition payments of parents who enroll their children in these schools. When we choose to establish our own schools, we at the same time choose to assume the obligation to support and maintain them. In fact, we consider it a privilege guaranteed us in our land of religious freedom.

Although our churches have sought no governmental aid, we are experiencing no closing of schools and no decline in enrollment. During the past ten years the enrollment has increased from 26,000 to 30,000. New schools are opening every year. The reason: Our Christian people realize and appreciate the need and importance of thorough Christian education and training and they are willing to bring the necessary sacrifices.

Other reasons for not seeking governmental aid for our parochial schools: We are fearful that accepting government aid may hinder our schools from carrying out their objectives; it may lead to dependency upon government and undermine our Christian stewardship; it may bring with it undesirable government control; it may jeopardize our Bible-permeated Christian education.

We respectfully ask the committee to consider carefully the following points:

1. Decline in enrollment in Catholic schools is not due only or mainly to lack of funds to maintain them. The State of Wisconsin Governor's Commission on Education reported in 1970 as follows: "A substantial number of Catholics now question the need for, and the desirability of, a separate parochial school system. . . . There is considerable doubt whether the absence of public tax support is the cause for declining enrollments or whether the furnishing of governmental aid will reverse the decline."

2. Minimal aid will not keep keep schools from closing. Such aid will be looked upon as merely a prelude for more and more aid. Pressure groups will keep on demanding more financial support for parochial (church) schools until these schools receive the same tax support as the public schools receive.

3. Aid to the parents by means of tax credit is indistinguishable from rendering that same aid to the church or church school itself, for the amount granted in tax credit is intended to flow into the church or parochial school treasury. Making possible such aid is therefore a violation of the First Amendment of the Constitution. The establishment clause of the First Amendment means that "tax in any amount cannot be levied to support any religious activity or institution."

4. Parochial schools are established and maintained to give the children enrolled thorough indoctrination in the religious confessions of that respective church body and to permeate all teaching with the religious confessions held by the church body. Hence, religious instruction is carried on all day. There are no purely so called "secular" subjects. The Wisconsin State Governor's Commission on Education stated in its report: "It is not good public policy to appropriate public funds to preserve a system of education the unique purpose of which is to teach a religiously-oriented value system."

5. Interdependence between church and state can be damaging to both the church and the state as history well illustrates. When churches become concerned about the amount of money they think they should receive, they will find it necessary to lobby for their maintenance. Churches will inevitably be used by the state as one of its sources of political support and influence and the state will be used by the churches for the same purposes. The actual and intended purpose and function of state and church will become confused and both will suffer as a result.

6. Control always follows expenditure of tax money, and it should. It is only right and natural that the government agencies control that which they subsidize. Tax payers expect the government to see to it that our tax dollars are spent wisely and that they accomplish their intended purposes. We quote again from the Wisconsin Education Commission report: "Public aid programs to private institutions are likely to lead to public control and regulation which the Commission believes will inevitably depreciate the uniqueness of the private system."

We are convinced that it is most advantageous that churches carry on their parochial school educational programs independent of government tax support and that they do so with their own resources. In this way, we believe, the best interest of both church and state will be served.

Respectfully yours,

ADOLPH FEHLAUER,
Executive Secretary,
Wisconsin Synod Board for Parish Education.

WASHINGTON, D.C., *August 16, 1972.*

Mr. JOHN M. MARTIN, Jr.,
Chief Counsel, Committee on Ways and Means,
Longworth House Office Building, Washington, D.C.

DEAR MR. MARTIN: I am submitting a written statement in lieu of a personal appearance for consideration for inclusion in the printed record of the Hearings relating to Primary and Secondary Education to begin Monday, August 14, 1972.

Allow me to submit a brief biography. I represent no organization. I am a Jesuit, finishing a second Master's Degree in Theology, a product of parochial schools from kindergarten through college, and have taught at both a Catholic high school and college. I hold an M.A. summa cum laude from UCLA, and am obtaining my second M.A. at the Graduate Theological Union, Berkeley, California. I am editor of two regional Jesuit magazines, and am preparing for a career as a Jesuit lawyer specializing in poverty and minority problems. This summer I have conducted an in depth legislative and legal study of the issue of aid to non-public schools as a Congressional legislative intern.

I hope you will find my brief testimony worthy and suitable for inclusion in the printed record of your hearings. After August 20th, my residence will be: Jesuit School of Theology, 2538 Virginia Street, Berkeley, California, 94709.

Thank you very much for your consideration of this testimony.

With every best wish, I am

Cordially yours,

ROBERT CURRAN, S.J.

Enclosure.

STATEMENT

To: The Committee on Ways and Means.
From: Robert Curran, S.J., The Jesuit School of Theology, 2538 Virginia Street, Berkeley, Calif. 94709.
Date: August 16, 1972.
Re: Testimony opposing tax credits or deductions for parents with dependents in church related schools on the primary and secondary levels.

BACKGROUND AND BIASES

I am a Jesuit and a product of parochial schools from both sides of the desk from kindergarten through college. I have taught at both a Jesuit high school and a Jesuit university, and I share pride in the high quality of Jesuit and Catholic education in America. And as one or two of these Catholic schools close each day, I mourn the loss of such fine institutions. Sadly, economic necessity is slamming the door on many enduring religious values handed on in religiously-affiliated schools.

OPPOSITION TO LEGISLATION

Yet I must reluctantly testify today in opposition to the proposals before the Committee on Ways and Means regarding tax credits or deductions for parents with dependents in Church related schools on the primary and secondary levels.

A FUNDAMENTAL REASON FOR OPPOSITION

A single, fundamental reason prompts me to conclude, contrary to my personal sympathies and feelings, that the proposed legislation should be rejected: our Constitution in letter and spirit precludes the advancement of religion by government, and this legislation primarily advances religion.

The Constitutional issue stands or falls on whether state money (here, tax credits or deductions are unambigiously money refunds issued by the state) has as its primary effect the advancement of religion. Charitable contributions are tax deductible presumably because they primary effect is usually to advance some secular or human concern without directly affecting or promoting institutional religion. But since the primary purpose of Church-related education is religious education, the primary effect of state subsidized tuition would be the advancement of religion. If Catholic, Protestant, or Jewish schools are not primarily established to educate children in religious principles for religious reasons, then what is the justification for their separate identity or very existence? And if Church-related education primarily advances religious purposes, it cannot receive, directly or indirectly, any form of state money—and remain within the bounds of the Constitution.

Virtually every other proposal for state money to aid non-public, Church-related schools has been ruled unconstitutional. The present proposal has and no doubt will be cruelly exploited by politicians attempting to win votes from those who win benefits from this tax-relief. But all the while, these same politicians are raising false hopes for both parents, and school officials who so actively support these proposals. In an election year, it is so easy to promise what in fact the Supreme Court might well forbid. Seven members of President Nixon's Commission on School Finance specifically refused to "raise false hopes" regarding the possibility of tax credits or deduction for parents with dependents in Chuch-related schools. In their Report to Mr. Nixon last March, they concluded: "The Commission, after considering the best advice by lawyers it could get, could not find any proposal for a substantive form of assistance to non-public schools which appeared both practical and a probable winner of judicial challenge."

Summary of Statement.—As a Jesuit educator, I believe Catholic education has been a positive force in America and should be retained. Nevertheless, the Constitutional prohibition against state aid to benefit religious purposes prompts me to conclude that any form of tax credits or deductions is unconstitutional. Religious education primarily advances religion, and the state can have no part in aiding that advancement. Therefore, I oppose the proposals before the Committee on Ways and Means regarding tax relief for parents with dependents in Church-related schools on the primary and secondary levels.

NATIONAL CONGRESS OF PARENTS AND TEACHERS,
Rock Island, Ill., August 31, 1972.

HON. WILBUR D. MILLS,
Chairman, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.

MY DEAR MR. MILLS: The National PTA, representing approximately nine million members, wishes to express to you and the committee our deep concern about, and firm opposition to aid to primary and secondary education in the form of tax credits and/or deductions.

The Legislative Program of the National PTA has for many years stipulated that "Federal funds for the education of children and youth should be used only by public boards and departments". Therefore, we have consistently opposed any legislation that would channel money into non-public schools. We believe the proposed legislation allowing parents tax credits for tuition to non-public schools is an indirect aid to the non-public schools. For the same reasons, we have opposed the use of vouchers in the schools.

The National PTA has always been committed to equal opportunity and quality education for all children. We believe this must be made possible through the public schools. At a time when the need for large amounts of federal funds is so clear, it appears to be most unwise to divert needed revenue at the federal level into non-public schools. A dual system is more expensive to operate. Historically, the public schools have suffered when public monies have gone to private schools. The right of the non-public school to be selective of its students often leaves the poor, the black, as well as the children with special needs, to the public schools. Also, as more parents are encouraged to send their children to non-public schools, the general public becomes less willing to adequately support the public schools.

The National PTA urges you and the members of the committee not to support this legislation providing tax credits for parents paying tuition for students in non-public schools, but rather work for legislation which would augment and strengthen the public schools.

Thank you for hearing our views.

Yours very truly,

CAROL K. KIMMEL,
Coordinator of Legislative Activity,
National PTA.

STATEMENT OF THE UNITED PARENTS ASSOCIATIONS OF NEW YORK CITY

The United Parents Association of New York City is a federation of parent and parent-teacher associations in over 500 public schools with a half million parents of every race, religion and background, living in every corner of the city working together for public education.

Our membership is deeply concerned with the quality of education our children receive and has worked diligently to strengthen and expand free public education.

We are also concerned about retaining and protecting those portions of our constitution which go to the heart of our fundamental rights. Of particular concern is the maintenance of the separation of Church and State.

The United Parents Associations is opposed to proposals for Federal tax credits for nonpublic school parents. This is a thinly disguised plan to aid religiously affiliated schools since 95% of all nonpublic schools are controlled by religious bodies. The threat of parochial schools closing their doors is being used to force greater government aid for these institutions. We recognize that private and parochial schools have a unique contribution to make to our society, provided that they are fully supported by the private sector. As ominous as the threat that parochial schools will close their doors and inundate the public schools may seem, we do not consider this a threat. If more parents want to take advantage of the availability of public education, the increase in enrollment of the public schools would then reflect the diversity of population which public education was intended to serve. Moreover, in terms of tax dollars, it is less expensive to support one school system than several systems. However, if parents want the selective and special interest kind of education that parochial schools offer, they must be prepared to support them. If we are to support the non-religious education of students now attending nonpublic schools, then let us support them in the public institutions which are open to all, regardless of race, religion or economic status and do not violate the religious conscience of any of our citizens.

The United Parents Associations is not opposed to private and religious education. We support the right of parents to select the kind of education they desire for their children. We are concerned with who pays for this private educational system. We firmly believe that public monies should only be spent on public education. The campaign to divert limited available public funds to nonpublic schools comes when the public schools face increased costs and increased needs. The crisis in our public schools must be met by adequate funds to support them. The shortage of funds for public education is well known. Money proposed for private education must be deducted from something else. Will that be programs for the disadvantaged, will that be the diversion of public funds away from the public schools?

In support of aid to parochial schools it is frequently argued that these provide a public service in educating children in the secular subjects, math, science, social studies, languages, etc. However, the religious denominations which maintain separate schools have always argued that sectarian education is a total experience, that every subject must be permeated by the doctrines of that particular religion. If this philosophy did not or does not prevail, if it is possible to separate the secular from the religious mission of the parochial school, then there is no rationale for maintaining separate day schools and all children could attend public schools for their basic education and the church or synagogue school for religious instruction after regular school hours, which is what most public school children do.

Another argument—that the taxpayer and the public school system are spared the cost of educating the hundreds of thousands of youngsters in parochial schools—is specious in view of the attempts being made to get a larger and larger proportion of the tax dollar for maintaining those schools. If this trend is not checked and reversed, the public will in fact bear the same expense of educating these children, but in separate, religiously dominated schools. If they are to be educated at public expense they should be in public schools and we would welcome them.

The public schools have made it possible for youngsters of diverse national origin, religion, ethnic backgrounds, social and economic levels to go to the same schools and as children, live and learn together, to respect each other and all religions. Our experience also has shown that children tend to divide along the lines of the school they attend, and it is the growing up apart which causes conflict later. A fragmented educational system produces a fragmented society.

We are today witnessing one of the most tragic ironies in our entire history. Since the Supreme Court decision of 1954 which ruled that separate but equal education was illegal and damaging to the black child and to democracy, every effort at desegregation in the public schools has been accompanied by a growth in the nonpublic schools. Without ascribing intent on their part because we think many church leaders are deeply concerned about this, the fact is that they have provided refuge for whites fleeing integration.

This, combined with the flight of the middle classes to the suburbs, has resulted in more and more segregated and ghettoized urban public schools and the social dynamite which is exploding across this nation.

If the schoolhouse becomes the conduit for public tax monies to the church or synagogue there will be a vast proliferation of parochial schools of every denomination competing for these funds. There are over 200 religious sects in this country. Would government make judgments about what is or is not a religion? Would government begin to ask questions about those who want to teach controversial religious or perhaps anti-religious beliefs in publicly supported schools? And what of those who wish to teach bigotry or hatred of blacks, whites, Jews, Catholics, Indians, Chicanos, or any other groups? It is just because of the divisiveness of such issues that the Founding Fathers felt it wisest to keep the government out of private concerns and particularly religious concerns.

Parents of children in the public schools are becoming impatient and disillusioned by the ease with which commitments to public education are verbalized while the children are shortchanged. A massive input of Federal aid to public education, into the basic support of the public schools is long overdue.

As a charter member of PEARL (the Committee for Public Education and Religious Liberty) UPA supports the statement made by its vice-chairman Mrs. Florence Flast.

The public school parents in the United Parents Associations consider it a mandate to uphold, improve and defend only public education. It is almost too axiomatic a truth to reiterate that the public school system is the most important ingredient in education, working to weld together our diverse citizenry into an effective democracy.

STATEMENT OF DOUGLAS R. SELTZ, PRESIDENT, MINNESOTA FEDERATION OF CITIZENS FOR EDUCATIONAL FREEDOM, INC.

I am Douglas R. Seltz, a Saint Paul attorney and President of the Minnesota Federation of Citizens for Educational Freedom, Inc. I am a member of the Lutheran Church—Missouri Synod and have three children in nonpublic schools in Saint Paul. I am the Past President of the Saint Paul High School Association; member of the Board of Directors of the Minnesota South District, Lutheran Church—Missouri Synod; member of the President's Council, Valparaiso University, Valparaiso, Indiana, and holder of the degrees of Bachelor of Laws and Doctor of Jurisprudence, Valparaiso University.

During all of my adult life I have been actively engaged in welfare and administration of nonpublic schools from elementary through higher education. Not as a paid staff member have I been involved, but as one who believes in high quality education, including instruction in religious principles because it is so important to the way of life of every child that he grow educationally and spiritually.

When I first became involved in nonpublic education parents and sponsoring groups somehow found it possible to provide such instruction. As years went by and inflation increased, I began to note that no matter how dedicated parents were, high costs were excluding them from the schools they admired. More and more schools were forced to maintain the status quo or limit enrollment or actually cut back on their programs. This seriously affected the quality of education. More importantly, I noted that parents who believed in nonpublic education were finding it impossible to start new schools, much less maintain them. Churches and individuals were going into deeper and deeper debt to maintain an educational system they deeply believed in. And so I began to realize that no matter how much people were dedicated, they simply could not continue for long in support of nonpublic education.

I became an active member of Citizens for Educational Freedom because I was convinced that only through state and federal legislation could the nonpublic schools be preserved.

CITIZENS FOR EDUCATIONAL FREEDOM (CEF)

Since its birth many years ago, CEF has rallied the support of countless thousands of parents, educators, clergy and students to the cause of preservation of the nonpublic school system. In Minnesota, CEF is a nonprofit corporation organized under the laws of that state. Most of its members are members of the Christian Reformed Church, Catholic Church and Lutheran Church—Missouri Synod. In many states CEF is unincorporated and operates as an unincorporated association of individuals dedicated to its purposes and objectives. National Citizens for Educational Freedom has offices in Washington, D.C.

In my state, CEF has been an influential force in obtaining enactment of Chapter 944, Laws of 1971, a statute allowing state income tax credits to parents with children in nonpublic schools. The Minnesota statute is the first of its kind in the United States. Early in July 1972, Ramsey County District Judge J. Jerome Plunkett held the law to be constitutional in all respects. Appeal to the state supreme court is now being prepared by the opponents of the tax credit law.

The statute and Judge Plunkett's opinion will be mentioned later in this statement.

WHY TAX CREDIT AID TO PARENTS?

I refer the Committee to pages 12 to 16 in this statement where I quote briefly from statements made by Wendell R. Anderson (Dem.), Governor of Minnesota, Richard M. Nixon, President of the United States and The Task Force on Economic Growth and Opportunity, Chamber of Commerce of the United States (1966).

Governor Anderson's 1971–73 Budget provided $27 million for tax credits to parents of children in nonpublic schools.

On March 3, 1970, President Nixon told the Congress of the gravity of the situation. On several occasions since that date the President has made known his determination to preserve nonpublic education. I am informed that he supports the tax credit principle, probably as embodied in Chairman Mills' and Representative Ford's bill and others already introduced.

Senator Hubert H. Humphrey and many others prominent in the Democratic and Republican parties have spoken fearlessly in favor of some kind of help to parents and the distraught nonpublic school system.

All citizens of good will affirm the high worth of education, public and nonpublic. Governmental generosity, local, state and federal, to promote excellence in education is far too obvious for doubt. Inflation has added dangerously to the cost of maintaining first-rate educational institutions. In the public sector, education tax increases are meeting heated resistance. Nonpublic school parents are paying increasing taxes to support the public schools and at the same moment are oppressed by rising maintenance costs in nonpublic schools. This double burden is becoming almost intolerable.

I am impelled to comment on certain principles accepted by the Minnesota Legislature in 1971 and by Governor Anderson when he signed the tax credit measure into law:

1. Nonpublic schools, private, independent and religiously oriented, have achieved an enviable reputation for their contribution to the "public service" education of millions of children over many generations.

2. It is now universally recognized that parents have the constitutional and first responsibility for the sound education of their children and that they have the basic right to choose the school and type of education they wish for their offspring.

3. In some 400 Minnesota church-related schools children receive a splendid education in the same subjects taught in the state's excellent public schools and in addition receive instruction emphasizing spiritual values and sound religious faith. It is the right of a child to receive both forms of instruction that millions of parents now defend and promote.

4. Public and nonpublic schools throughout the nation have together, as partners, brought excellence to the educational process.

5. A nonpublic school's relative independence of state control stimulates diversity, innovation and experimentation in teaching methods. It provides a guard against a monolithic, monopolistic educational system. A pluralistic society demands competition, wholesome diversity and sound innovation.

6. In Minnesota we considered the maintenance costs in both public and nonpublic schools. Nonpublic schools educate a child for approximately half the maintenance costs of the public system. Witnesses before the legislative tax committees estimated that the state's nonpublic schools saved taxpayers between $90 and $100 million each year. In our state, keeping nonpublic schools open made sound financial sense. While the economics of the problem impressed lawmakers, it was preservation of the dual system that probably interested them most.

7. Elementary and secondary education has a recognized public service, public welfare purpose. Nonpublic education contributes greatly to the achievement of that purpose. In 1971 we believed, and still believe, that if nonpublic schools remain open they will increasingly help the poor, disadvantaged and underprivileged child to obtain a first-rate education.

8. Many federal and state laws adopt and accept the principle of aid to students in institutions of higher education—public, private and church-oriented. Witness the G.I. Bill, scholarship grants in many states and so on. Hence, there is scant reason for denying reasonable aid to parent and child in nonpublic elementary and secondary schools.

I would not be here today to plead the cause of nonpublic education if my children received an inferior education in their Lutheran school; if the system caused divisiveness; if it called for excessive entanglement of church with state; if segregation by race or color were promoted. Evidence relating to nonpublic schools in Minnesota negates any and all of these dangers. Nonpublic education was enjoyed by countless thousands for decades after the birth of our republic. Nonpublic education was the seed of our educational system before the compulsory education laws. It is still a comparable and effective system, and, to those who use it, a superior system. One need only look at uncounted thousands of men and women who are products of the nonpublic school system—business and professional leaders, educators, labor leaders, political figures and others, to see evidence of nonpublic education and its accomplishments.

TAX CREDITS AND THE MINNESOTA LITIGATION

Because the Minnesota statute is readily available to the staff of the Ways and Means Committee, I am not supplying copies today. A few observations may, however, be helpful.

In brief this is our new law:

1. The statute gives state income tax credits to parents of children in nonpublic kindergarten, elementary and secondary schools. Such a school is one other than a public school, situated in Minnesota, wherein a state resident may legally fulfill the state's compulsory attendance laws, is not operated for profit, and adheres to the provisions of the Civil Rights Act of 1964.

2. Maximum calendar year income tax credits are $50 for a kindergartener, $100 for an elementary child and $140 for a high schooler. No credit is allowed unless the parent or legal guardian actually paid tuition. In other words, if a parent of an elementary child paid tuition of $50 he could not claim a tax credit of more than $50. If a parent paid a tuition of $125 he could claim a tax credit of $100 only.

3. The Legislature assured that no tax credits would be allowed for school expenses in the teaching of religious doctrines or principles. This safeguard was accomplished by requiring that a school's maintenance costs be reduced by 20% before the tax credit formula to maintenance costs. The Legislature thought the 20% would be more than ample to eliminate religious instruction costs.

4. In no event may the tax credit exceed the percent of average state foundation aid to public elementary and secondary schools.

5. Especially attractive to the Legislature are the provisions sometimes called a "negative income tax". If a parent owes the state no income tax, he gets a payment equal to his earned credit. If the parent owes the state less than the earned credit, he receives a state check for the difference.

6. The statute requires prescribed tax forms, including receipts for tuition payments, school maintenance cost forms, etc. The statute carries the customary provisions to guard against fraudulent returns and provides penalties for violations of the law.

Following enactment it was estimated that in Minnesota tax credits for the 1971–73 biennium might total $21 million or $10.5 million per year. It is now estimated that for calendar 1971 tax credits may not exceed $8.5 or $9 million.

While a handful of very small nonpublic schools will be closed in 1972–73, parents find the problem stabilized. The new law stopped a serious closing of schools because parents could see the light of day even though education costs and tuition charges have increased. Actually, parent-child morale has risen. They found legislative encouragement to pursue their constitutional rights. They feel better able to carry the heavy burdens demanded in support of public education also.

In Minnesota, all who support nonpublic education feel that our new law has gone a long way to preserve the cherished nonpublic system. They feel that in dollars the law reflects what the state can now afford. They do feel, however, that federal tax credits are absolutely essential if the system is to remain a part of America's education process. And remain it must. For it to close its doors would be national shame.

DISTRICT COURT DECISION RAMSEY COUNTY

In August and September 1971, two suits were brought to test the constitutionality of Chapter 944, Laws of 1971. Ramsey County's District Court was the forum of original jurisdiction.

Litigants are:

(File No. 379526) *Minnesota Civil Liberties Union, et al., Plaintiffs* vs. *State of Minnesota, et al.* Defendants; and *Quast, et al.* Intervenor Defendants.

(File No. 380252) *Minnesota Coordinating Committee for Public Education, et al*, Plaintiffs vs. *State of Minnesota, et al*, Defendants; and *Quast, et al*, Intervenor Defendants

On July 6, 1972, Judge J. Jerome Plunkett settled 126 findings of fact and as conclusions of law held that Article VIII, Section 2 of the Minnesota Constitution (Chapter 3, Laws of 1877—Blaine Amendment) was duly ratified by the voters; that Chapter 944, Laws of 1971, is constitutional in all aspects under both the state and federal constitutions, and that plaintiffs are not entitled to an injunction. Judgment was entered accordingly.

I cite below several extracts from the Court's Memorandum of Law. They may interest the Ways and Means Committee.

"Chapter 944 . . . did not directly help the schools but did help the parents with tuition costs, which was the purpose of the law."

"Chapter 944 has no stated purpose within the statute itself or its preamble. An examination of the statute clearly shows the purpose to be a partial tax relief to parents of nonpublic school children who, at their own expense, are providing a secular education and thus relieving the state of an obligation it would otherwise be fully obligated to perform . . . This is the obvious intent of Chapter 944 and the purpose is obviously secular."

"The serious constitutional problem would seem to be not whether Chapter 944 advances religion, but whether denial to children of financial assistance for secular education just because their consciences cause them to go to schools that also teach religion, would unconstitutionally *inhibit religion* and therefore violate the Free Exercise Clause." Citing *Pierce* v. *Society of Sisters*, 268 U.S. 510 (1925) and *Wisconsin* v. *Yoder*, — U.S. —, 92 S. Ct. 1526 (1972).

Judge Plunkett cites *Tilton* v. *Richardson*, 403 U.S. 672 (1971) on the question of religion permeating the secular education to such an extent that religious and secular aspects are inseparable. "It was also considered by this Court in *Allen*. There the court refused to assume that religiosity in parochial elementary and secondary schools necessarily permeates the secular education that they provide." (Burger, C.J.) Judge Plunkett then determined that "the primary effect of Chapter 944 is secular."

The district judge discussed many U.S. Supreme Court cases, among them *Lemon* v. *Kurtzman*, 403 U.S. 602 (1971) where "entanglement" was widely considered. Judge Plunkett said: "The entanglements found in *Lemon* were many . . . How does Chapter 944 fit into these prohibited entanglements? First of all, the aid is to the parents by way of a tax credit not a subsidy to a teacher nor a direct payment to a school . . . If the entanglement was involved it was not proved by the plantiffs . . . The testimony before the Court did not indicate any continuing involvement between the state and schools other than normal auditing of tax returns as before Chapter 944."

"The plaintiffs also contend that Chapter 944 is violative of the Due Process Clause of the Fourteenth Amendment. While pleaded and argued briefly, this Court can only say that the Due Process Clause if anything requires that Chapter 944 be held valid."

"Plaintiffs also allege that Chapter 944 violates the Federal Civil Right Act. Chapter 944 is a taxing statute and the record is devoid of any evidence or argument to sustain such a contention."

"As a final legal contention complaint is made that Chapter 944 violates the Equal Protection Clause of the Fourteenth Amendment. Once again the Court finds no evidence in the record nor legal precedents to sustain such a contention."

The district judge then rejects plaintiffs' plea that Chapter 944 violates Minnesota's constitution; that it is special class legislation; that the public schools will be destroyed.

CONCLUSION

I wish the staff and members of the House Ways and Means Committee and all members of the Congress to know that thousands upon thousands of Minnesota parents, children, educators and others urge enactment of effective federal legislation to the end that parents of children in nonpublic schools may receive help in carrying their education burdens.

From our experience in Minnesota we conclude that a federal income tax credit will bring added needed help to parents; that it will not violate either the First or Fourteenth Amendments; that it will not result in any excessive or unnecessary entanglement between church and state.

Statement of Governor Wendell R. Anderson (Dem.-Minn.) in his budget message to the 67th Session of the Minnesota Legislature (1971):

"This budget has sought to place the highest possible priority on providing assistance to public primary and secondary schools in Minnesota. I do not feel that our state can afford to ignore the plight of private and parochial schools either.

"The Governor has a Constitutional duty, with which I heartily concur, to maintain our historic and necessary separation of church and state in Minnesota. I am most sensitive to that duty.

"But I do not think that we depart from the spirit of that tradition when we recognize that private and parochial schools in Minnesota today are facing a fiscal crisis of unprecedented scope. No principle is served by closing our eyes to a situation which, if unaltered, may well place very large burdens upon our public school system."

Statement of President Richard M. Nixon to the Congress (March 3, 1970):

"I am establishing a President's Commission on School finance to help states and communities to analyze the fiscal plight of their public and non-public schools. We must make the nation aware of the dilemmas our schools face, new methods of organization and finance must be found, and public and non-public schools should together begin to chart the fiscal course of their educational planning for the Seventies.

"The non-public elementary and secondary schools in the United States have long been an integral part of the nation's educational establishment—supplementing in an important way the main task of our public school system. The non-public schools provide a diversity which our educational system would otherwise lack. They also give a spur of competition to the public schools—through which educational innovations come, both systems benefit, and progress results.

"Should any single school system—public or private—ever acquire a complete monopoly over the education of our children, the absence of competition would neither be good for that school system nor good for the country. The non-public schools also give parents the opportunity to send their children to a school of their own choice, and of their own religious denomination. They offer a wider range of possibilities for education experimentation and special opportunities for minorities, especially Spanish-speaking Americans and black Americans.

"Up to now, we have failed to consider the consequences of declining enrollments in private elementary and secondary schools, most of them church supported, which educate 11% of all pupils—close to six million school children. In the past two years, close to a thousand non-public elementary and secondary schools closed and most of their displaced students enrolled in local public schools.

"If most or all private schools were to close or turn public the added burden on public funds by the end of the 1970's would exceed $4 billion per year in operations, with an estimated $5 billion more needed for facilities.

"There is another equally important consideration: these schools—non-sectarian, Catholic, Protestant, Jewish and other—often add a dimension of spiritual value giving children a moral code by which to live. This government cannot be indifferent to the potential collapse of such schools.

"The specific problem of parochial schools is to be a particular assignment of the Commission.

"In its deliberations, I urge the commission to keep two considerations in mind. First, our purpose here is not to aid religion in particular but to promote diversity in education; second, that non-public schools in America are closing at the rate of one a day."

A portion of the Third Report of the Task Force on Economic Growth and Opportunity of the Chamber of Commerce of the United States—The Disadvantaged Poor: Education and Employment:

"*Completion in education.*—Finally, and perhaps most important, the Task Force favors the use of market forces to foster innovation and to provide evaluations of public school education . . . Objective measurement of the quality of education offered by an institution is difficult indeed. The Task Force proposes to promote innovation and provide an institutional framework for the subjective evaluation of education by administering a strong dose of that most stimulating of elixers—private competition.

"In brief, we recommend that the government consider continuing to finance education for all children—but that it offer them, as an alternative to public education, financial support for private education up to the amount of the average expenditure per pupil in local public schools. We are led to this somewhat unusual conclusion by our belief in the importance of sound education and our concern that the present institutional structure in education may not be the best way to organize it. Our concern is based in three general observations: Where market discipline—the knowledge that if the job is not done as well as it can be, someone else who can do it better will get to do it—is absent, both complacency and timidity develop. The complacency comes from the sure knowledge that no institutional substitute is available. The timidity comes from the almost-as-sure knowledge that if glaring mistakes are avoided, job tenure is likely to be prolonged. The businessman in a competitive industry knows that standing still—failing to innovate and improve efficiently—can be a more serious error than minor failure in a bold venture. Failure to innovate and improve creates a market opportunity which a competitor will be quick to exploit. Lack of competition eliminates this ceaseless pressure for progress. And as a result, public schools are less vigorous than they could be.

"The fear of trouble or failure has led to a proliferation of restrictive regulations. Regulations have made it difficult to innovate, and have served as a shield for those who lack imagination and daring. One student of education has commented that public educators have become "less willing to innovate, more anxious to hide behind rules and precedents, more conditioned to saying 'No'. The present state of knowledge makes mistakes inevitable in teaching economically and culturally deprived children. Does it make sense, then, to perpetuate an institutional framework which itself lessens the likelihood of innovation?

"The second observation in support of our conclusion is based on the virtues of diversity. It is our conviction that no single collection of men, however competent and however dedicated, can exhaust the worthwhile possibilities in a given subject matter. Diverse groups, each pursuing institutional or personal self-interest or even selflessly working in a variety of intellectual climates, are more likely to produce divergent ideas than any monolith, no matter how tolerant. We take this diversity for granted in scholarship, in politics, and in the abundance and variety of the commercial market-place. Why should we settle for the single choice in education?

"And finally, a strong bias in favor of free choice and maximum satisfaction of individual preferences underlies our conclusion. As an intrinsic matter, we think it desirable that parents should have a choice of schools for their children. Educational philosophies differ. Different schools, none of them perfect, will have different combinations of strengths and weaknesses. Parents, with the help of professional guidance if necessary, should be able to choose among them to find the combination that best satisfies them and their children. Americans take this freedom for granted in planning college or university educations; relatively well-off Americans and members of some religious groups exercise the same choice for their children at the secondary-school level and sometimes before. Why should we settle for less for the great majority of Americans at the primary and secondary levels?

"The notion that the government should not have a monopoly on publicly-financed schooling, that it should be willing to compete in an open education market with proprietary and non-profit institutions, is neither unique to us nor unprecedented.

"Our view is shared by competent critics as divergent as Milton Friedman, the noted conservative economist, and Christopher Jencks, a liberal spokesman on education whose works often appears in the pages of "The New Republic." And it finds its precedent in the American system of higher education, in which the government and private universities have been in competition since the Northwest Ordinance of 1787, and where the government has subsidized students attending private institutions since 1944.[1]

Friedman has stated that:

". . . Both the imposition of a minimum required level of schooling and the financing of this schooling by the state can be justified . . . A third step, namely the actual administration of educational institutions by the government, the 'nationalization' . . . of the bulk of the 'education industry', is much more difficult to justify on . . . any . . . grounds."

The Task Force Agrees.

"As we have mentioned, private competition in education already exists for some of the population. Schools which differ in important respects from the public schools and from each other offer their services to a satisfied public. Some segregate the sexes, some use Montessori or the permissive Summerhill approach, some impose military discipline on their pupils. The variations are many and significant. Poor and middle-class children would almost certainly benefit if such a choice were available to them on fair terms. To date, only one nongovernmental alternative has been available to the poor. The parochial schools have shown that private alternatives can reach poor people. Parochial schools have often evinced a special concern for them and for members of minority groups. Although studies suggest that in many instances they offer their students an education at least as good as that offered in most public schools, we might well gain from offering poor people a wider secular choice."

The Task Force then discusses the voucher system for tuition payments. While I do not here take issue with that theory, we in Minnesota (and apparently many in the Congress) favor the income tax credit approach. It now seems to escape constitutional objections found in the Pennsylvania and Rhode Island "purchase of services" idea and objections voiced by some lower courts to the voucher system.

STATEMENT OF ROCK ISLAND COUNTY (ILL.) CITIZENS FOR CONSTITUTIONAL EDUCATION

We Citizens for Constitutional Education are not anti-Catholic, nor anti-parochial school; but we are FOR Constitutional education: public, private, and parochial. The official position of the CCE is as follows:

"We oppose the allocation of public tax money or expected revenue directly or indirectly for private and parochial elementary and secondary schools, whether through direct payments or grants, auxiliary services, textbooks, vouchers, tax credits, or any other form of parochiaid financed from public revenues."

To the Honorable Members of the House Ways and Means Committee:

Public officials and political leaders at many levels have, in the opinion of the Citizens For Constitutional Education, been misled by arguments which draw false conclusions from sometimes valid premises, by false premises, and by emotional rhetoric. Caspar W. Weinberger wrote to the Honorable Wilbur D. Mills on p. 19 of the Committee Print for the above mentioned bills, that the Administration is continuing to "search for ways to deal with problems of finance for both public and non-public schools." But is it truly the concern of government to finance the private sector?

President Nixon himself has pledged to support Catholic schools in order to stop the trend of Catholic school closings. Gov. Rockefeller of New York is favoring state aid to Catholic schools, and Gov. Ogilvie of Illinois is "convinced that should our parochial schools close because of lack of funds we would be confronted with a chaotic situation in our public schools. Our public schools just would not be able to handle the tremendous increase in enrollment."

According to Louis R. Gary, consultant to President Nixon's Commission on School Finance, and K. C. Cole, editor of Gov. Rockefeller's Fleischmann Commission Report, ". . . political leaders, reinforced by church leaders, also fear that, if the Catholic school system is allowed to collapse, the four million pupils now in Catholic schools throughout the country will be dumped into public schools. . ." ("The Politics of Aid—and a Proposal for Reform", Saturday Review, July 22, 1972, p. 31.)

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[1] The Servicemen's Readjustment Act of 1944 provided tuition to returning veterans and the National Defense Education Act of 1958 provided subsidies to certain civilian students. Both programs have been extended or expanded since their enactment.

Terms that beg the question, such as chaotic state, massive school closings, fear, collapse, and dumped, cloud the issue at hand: Should the U.S. Congress provide tax credits and/or tuition payments for private education?

The CCE maintains that paying people to send their children to parochial schools, either by replacing money that they have already spent or by encouraging them to spend this money is discriminatory, favoring one or more groups at the expense of others.

The CCE also contends that because of environment of Fear and Panic and Emotionally Charged Words, political leaders are not carefully examining the facts, and have sincere misconceptions. We suggest that it is time to separate facts from fallacies in the best interest of our country.

One fact, according to Gary and Cole, is that "enrollments in the U.S. Catholic elementary and secondary schools have dropped 18 per cent in the last three years—and conservative estimates predict they will drop another 42 per cent by 1980." But what are the reasons behind this drop in enrollment? Will government funding stop this trend? Are these schools closing because of lack of funds, as Gov. Ogilvie suggests?

Let's examine some widely held fallacies and misconceptions:

1. "Catholic schools are closing because parents cannot afford to pay tuition."

Refutation.—Gary and Cole say it is a "false premise that enrollments are falling because Catholic parents cannot afford to pay tuition charges to Catholic schools." (Ibid., p. 32.) They further state that two years ago the average yearly tuition in U.S. Catholic elementary schools was $42, and that although it was up last year to $120, enrollments have been declining for 10 years. In addition, their article continues, fully one-third of the Catholic elementary schools which closed in New York during the past 5 years charged no tuition at all! Thus, tuition in elementary and secondary Catholic schools is modest (or free) and is not directly related to the closing of particular schools. One other factor Gary and Coles suggest that may be pertinent is that "Catholic families contribute less than 2 percent of their incomes to their parish church . . .", 55 percent of which is channeled into parish schools.

2. "Enrollments are dropping faster in inner city schools."

Refutation.—Gary and Coles state, "If enrollments were dropping primarily in inner cities, then it could be correctly inferred that even modest tuition presented an unbearable family burden. But enrollment is dropping even faster in affluent suburbs."

3. "With government money, tuition will not rise and enrollments in parochial schools will stop falling."

Refutation.—Many factors other than tuition costs are contributing to falling enrollments of parochial schools. The national birthrate is falling. Even among Catholics, according to Gary and Cole, "Infant baptisms of U.S. Catholics fell from 36 per thousand in 1955 to 23 per thousand in 1970." Moreover, many Catholic famililes are choosing not to send their children to parochial schools for a variety of reasons.

With the advent of fewer teaching nuns and priests and more lay teachers, the distinctiveness of the Catholic schools is no longer so great. "In 1950, 93 percent of the teachers in Catholic schools across the country were brothers or nuns; today, fewer than half are brothers or nuns." (Gary and Cole)

4. "It would cost more to educate Catholic children in public schools than to aid the Catholic schools."

Refutation.—"The fact is," according to Gary and Cole, "that projected enrollment declines in most elementary public schools would make room for most transfers (from parochial schools) at a cost that makes this a viable public option."

5. "Parents of children who attend parochial schools are victims of double taxation."

Refutation.—According to Lawrence Lader (Sept., 1968, Parents, "A Hidden Threat To Education", p. 61), these parents are no more subject to double taxation than a childless couple, an aged widow, or millions of other citizens who pay local taxes for public schools whether they use them or not. The public school is a community responsibility; parochial tuition cannot be thought of as a tax but as the cost of a private purchase."

6. "Tax money can 'save' parochial schools."

Refutation.—Gary and Cole predict that enrollment in Catholic schools will drop some 42 percent within the next ten years "whether or not new income is found." They further state that it would be advisable to close many more inefficient parochial schools, to consolidate, reorganize, and strengthen the efficient ones. They suggest that church leaders have not planned well for the future, that internal organizational problems are the real reason for school closings. Certainly these are not government concerns.

CONCLUSION

In conclusion, may I say that our Constitution guarantees separation of church and state. Public monies should not be used for private purposes, even as noble as church institutions. Favored treatment of any religious education is discriminatory.

Let us not permit emotional appeals, charged words, and dire threats to become the order of the day. Instead, reason must prevail.

"Two great drives are constantly in motion to abridge, in the name of education, the complete division of religion and civil authority which our forefathers made. One is to introduce religious education and observances into public schools. The other, to obtain public funds for the aid and support of various private religious schools." (John Rutledge, United States Supreme Court Justice, 1789-1791.)

MONROE CITIZENS FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY,
Rochester, N.Y., September 7, 1972.

Hon. WILBUR MILLS,
House Ways and Means Committee,
Washington, D.C.

DEAR MR. MILLS: I understand that the House Ways and Means Committee is considering a number of bills to give parents up to $200 a year to repay private school tuition costs. The money would be given in the form of a credit against the parents' income tax bill.

I urge you to oppose any of these bills.

Government support for any private school weakens the public schools. Private schools are free to select and reject students on grounds of race, religion, wealth, intelligence, and behavior. Private schools take the children easiest to educate and return difficult children to the public schools.

Furthermore, government financial support of church-related schools is unconstitutional. Since 1971 (June), parochiaid bills have been declared unconstitutional by Federal Courts in Pennsylvania, Connecticut, Vermont, Ohio and New York.

At the very least, the Congress should postpone action on tax credits until the Federal Courts have made a decision.

As a compromise solution, let me suggest tax deductions. The U.S. Supreme Court has found that religious schools are an integral part of the religious mission of a church. Contributions to a church may constitutionally be deducted from income before calculating taxes. Therefore, tuitions paid to a church-related school could constitutionally be deducted from income before taxes.

Thank you for your attention.

Sincerely yours,

MARTHA LATIES, *Chairman.*

STATEMENT OF MRS. JOSEPH R. GLENN, LOUISVILLE, KY.

Gentlemen, although I am certain that each of you is familiar with the history of Judicial recognition of the fundamental right of parents to direct the education of their children, I want to begin by recalling to you a statement of the Court which decided the case of *Pierce* v. *Society of Sisters*. That Court said: "The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."

Unfortunately, the various levels of government in our Nation have done little, if anything, to ensure that all citizens who are parents could exercise that right on an equal basis under the law.

The citizen who chooses to enroll his children in a *public* school thereby gains for his children the full educational benefits provided by tax revenues collected from *all* citizens, with his only appreciable expense being whatever might be computed as his fair share of whatever taxes are levied to support the public school system. Conversely, the citizen who chooses to enroll his children in a *non-public* school not only forfeits those benefits, even though he also must pay whatever might be computed as his fair share of whatever taxes are levied to support the public school system, he must concurrently take on the additional financial burden of providing his share of the revenue needed to operate and maintain the non-public elementary and secondary schools he has chosen to educate his children. There is a basic inequity in this situation that could well be in conflict with the "equal protection" provisions of State and Federal Constitutions.

Every state in the Union has shown a continued willingness to readily accept and approve the existence of non-public schools within their borders, and to rely on those non-public schools to provide an acceptable secular education to some percentage of the State's school-age citizens. By that acceptance, approval, and reliance, the various State Legislatures have knowingly reaped for the state and its citizens a considerable reduction in the expense and responsibility the state is by law required to meet in providing a 12-grade school service for all children residing in the state. Yet, there has been little or no effort on the part of those Legislatures to provide tangible recognition of this public service being performed by those citizens who voluntarily subsidize the educational responsibilities of the state by supporting and maintaining non-public elementary and secondary schools.

In all justice, it is high time that the Federal Government recognized and acted on its obligation to ensure that all citizens who are parents are enabled to freely choose the schools they want to educate their children, just so long as those schools are recognized and approved by the local and state governments, without thereby incurring a doubled financial burden that is becoming ever more heavy and difficult to manage.

I urge each of you to give credit where it is due by supporting the provisions of Title II of the H.R. 16141.

STATEMENT OF ISABEL C. MOORE, BETHESDA, MD.

The perennial issue of national government financing of private schools, especially religious schools, is again coming up for legislative action and the time is long past due when some realistic, common sense is applied so it can be settled justly and permanently! The illogical, erroneous, prejudicial, irrational, arguments against this are mostly made, surprisingly, by people who would naturally be expected to have an especial appreciation of the value of religious principles, as they work in it.

The people of our nation should fervently thank God for religious schools! They may save our nation from the terrible punishment of God when he becomes fed up with the sickening immorality of many of our people!

The enormous crime that is rampant in high as well as low echelons of social strata against which the precepts of God are the greatest deterrent, the teaching of which is the vital function of religious schools, doesn't pierce the mentalities of some people who are still suffering from the hangups that are hangovers from the past when people weren't very bright and unreasoning religious prejudices were common in most denominations.

People who protest this with such hysterical fervor but are silent about the immorality that comes from lack of it should be recognized as the unfortunate victims of the brainwashing of parents and others who usually live in isolated places and have had little contact and association with the rest of the world. They have never had the facts made known to them and this has been perpetuated by the closedmindedness of their descendants which has caused them to blindly refuse to find out the facts!

They have failed to comprehend the great practical as well as spiritual value of religious schools which make enlightenment in this primary need in life accessible to people, especially when they are young and more amenable to instruction and guidance, and have a whole lifetime to benefit by this.

Anyone who would prevent this should remember that a person who would hurt a little child in any way "it would be better if a millstone were hung around his neck and he be cast into the sea"!

The most heartbreaking experience a mother can have is to spend years of her life in hard, conscientious, toil and sacrifice to rear children the best she is able to with the many handicaps mothers have, and then see them become bad when adults! Complete assistance, financially and materially, is one of the first matters of legislation Congress must bring about for mothers!

The incredible thing is that people who have advanced to modern, realistic, ecumenical thinking have allowed a few to prevent this important help in human existence!

Facts.—These are the facts that every intelligent, perceptive, person will verify if they are not known, so this desperately needed assistance in reducing human tragedy, which religious schools contribute so much to, and the advancement of moral, responsible, happy, living is made accessible to every person possible by complete financing of these schools thru taxes. This would be infinitely more humane and less costly than our present method of spending billions in an effort to rehabilitate human degradation, if possible, in prisons, insane asylums, hospitals.

And this should never be considered largesse from a generous government! Inflexible mentalities with little gift for simple arithmetic reiterate over and over that the taxes of all citizens would pay for religious schools. The fact is that the parents of children in religious schools and all the parishioners pay the same amount of taxes that every other citizen does which finances education for others' children, and in addition they have the burden of financing their religious schools. Many of these parents and parishioners have low or no incomes so the school pays for their tuition.

It is a matter of elemental justice that each child in religious schools be given the same amount of money that each child in public schools get, which should be given directly to the school to insure that it is spent for this education. Religious schools have to conform to the curricula of public schools, so this money is only for general education. Religious instruction is an *additional* subject!

The $200 reduction in taxes is completely inadequate! Some parents pay little or no taxes because of low or no income. It would not begin to fulfill this just obligation!

Some people hysterically insist that help for religious schools is a violation of the Constitution. This is a misconception. The Constitution does not prohibit any alliance between church and state! It states that there will be no restriction of freedom to practice religion, which actually justifies government help. And no one with elemental intelligence would allow even the Constitution to take precedence over the Ten Commandments!

No objection is made to government financing of religion in Congress, the army, educational institutions for veterans.

Some people discard religion because of the failures of some so-called religious people, especially popes, priests, ministers. This is the ultimate in lack of logic and reality! The only thing necessary for anyone to concentrate on is one's own personal devotion to God and His laws, which are the source of all morality and beneficence. It is not the failings of men who are often the helpless victims of their inheritance of imperfection. And the only thing each person has to account to God for when life is over, is the use or misuse he made of the precious gift of life!

It is not true that religious schools foster either race or religious prejudices. Catholic schools have had children of other races and religions, and is still doing so in substantial numbers. They accepted other races before the public schools did.

Religious education is given by nuns who have dedicated their lives to God, with no diversion from this goal, and little monetary recompense, which makes their instruction one of high standards!

One of the principal tenets of Catholic and other religious schools is that "No man can live by himself alone", that every person is a human being created by God, therefore requires the reverence that a creation of God merits! Race, religion, and everything else comes after. Also that everything one person does is reverberated thruout many others' lives. Hitler caused a world war! Any member of the Catholic religion, no matter how high his position is, who fails to live up to these standards, is the only one who should be blamed, not the religion which was instituted by God!

Those who argue that such things as religion and sex should be taught in the home and church, fail to face the fact that this is completely unrealistic, when some parents have no appreciation of religion and don't send their children to church, which leaves the school as the only place it can be gotten. And religious principles and morals can hardly be taught by parents who are sex swappers, alcoholics, wheeler-dealers, drug addicts!

Even good parents sometimes complacently feel secure in the thought that because they are moral and honest their children will automatically be so—until tragedy shocks them into the realization that no guarantee of perfection comes with any human being! Babies come into this world with only five senses and a more or less functioning conscience. All knowledge, instruction, and guidance, has to supplement and enhance this!

The cost to the general public for additional public schools if religious schools were to close would be enormous! And this is likely to happen because of lack of funds.

Solution.—Fortunately humans in general are much more intelligent now than in the past when many were not very bright. The simple solution is for the national government to make all education free! The cost of this would only be in addition to the millions that many people are spending to get education which is often a severe struggle, with some getting it while others don't, altho every person is paying for it in taxes and high costs of living! This is another of the many injustices the people of our so-called democracy suffer!

Enlightenment thru intelligent, realistic, education which should be for all of life, not merely academics and professions, would bring about advancement in living that would be spectacular! And the second imperative is health which should also be free! Everything in life is deeply affected by these two primary basics! The excuse that this is impossible because of lack of funds is not valid when billions of dollars are spent for countless unnecessary and even harmful things!

Without enlightment we would still be in the jungle, altho some people haven't emerged yet, and others are assiduously receding back to it, in spite of the facade of civilization they project. Without health the hundreds of thousands of human beings suffering in every category of disease will never be reduced!

If members of Congress have any conscience at all, and any comprehension of the terrible need for better living, they will at last have the stamina to throw off the pressures of self-seeking groups and make this possible!

Please send me the findings of your committee when they are published.

Respectfully submitted.